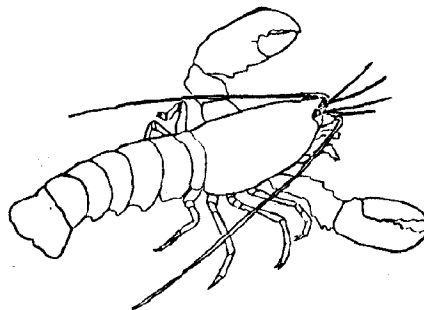


UNITED STATES  
DEPARTMENT OF COMMERCE

DRAFT  
ENVIRONMENTAL IMPACT  
STATEMENT

PROPOSED FEDERAL APPROVAL  
OF THE COASTAL ZONE MANAGEMENT PROGRAM,  
MID-COAST SEGMENT, STATE OF MAINE



PREPARED BY  
OFFICE OF COASTAL ZONE MANAGEMENT  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
U.S. DEPARTMENT OF COMMERCE  
ROCKVILLE, MARYLAND 20852

TD  
194.5  
N38

COASTAL ZONE  
INFORMATION CENTER



Summary

(X) Draft ( ) Final Environmental Impact Statement  
Department of Commerce, National Oceanic and Atmospheric Administration,  
Office of Coastal Zone Management  
For additional information about this proposed action or this statement,  
please contact:

Edward T. LaRoe  
Office of Coastal Zone Management  
National Oceanic and Atmospheric Administration  
Rockville, Maryland 20852 Phone (301) 496-8896

1. Proposed Federal approval of the mid-coast segment of Maine's Coastal Zone Management Program

(X) Administrative ( ) Legislative

2. It is proposed that the Secretary of Commerce approve the Coastal Zone Management Program application of the mid-coast segment of the state of Maine P.L. 92-583. Approval would permit implementation of the proposed program, allowing program administrative grants to be awarded to the state, and require that Federal actions be consistent with the program.

3. Approval and implementation of the program will restrict or prohibit land and water uses in certain parts of the Maine coast, while promoting and encouraging development and use activities in other parts. This may effect property values, property tax revenues, and resource extraction or exploration. The program will provide an improved decision-making process for determining coastal land and water uses and siting of facilities of national interest, and will lead to increased long-term protection of and benefit from the state's coastal resources.

4. Alternatives considered:

A. Federal Alternatives to Approval of Maine CZM Program:

- 1) Delay approval of Maine CZM Program until all regional plans are completed and approved.
- 2) Delay approval until state or national land use legislation is adopted.
- 3) Delay approval until Federal policies establishing the national interest in siting of facilities are developed.

B. Implementation and Control Alternatives for the State CZM Program

- 1) Consolidation of all regulatory authorities in DEP
- 2) Use of other authorities for funding and implementation of the program
- 3) Increased direct state control over its CZM program
- 4) Increased local government control over the state CZM program

C. Alternatives to Proposed Program Elements

- 1) Change the coastal zone boundary
  - 2) Extend permit control to roads and borrow pits
- US Department of Commerce  
NOAA Coastal Services Center Library  
2234 South Hobson Avenue  
Charleston, SC 29405-2413

COASTAL ZONE  
INFORMATION CENTER

70194.5  
C.1  
N38

5. List of all Federal, State, and local agencies and other parties from which comments have been requested.

Federal Agencies

Department of Agriculture

Agricultural Stabilization and Conservation Service

Forest Service

Soil Conservation Service

Rural Electrification Administration

Agriculture Research Service

Department of Defense

Army Corps of Engineers

U.S. Navy (Ship Pollution Control)

Department of the Interior

Bureau of Land Management (public lands)

Office of Oil and Gas

Bureau of Outdoor Recreation

Fish and Wildlife Service

Bureau of Indian Affairs (Indian lands)

Geological Survey

National Park Service

Office of Land Use and Water Planning

Bureau of Reclamation

Office of Saline Water

Bureau of Mines

Power Marketing Administration

Department of Transportation

Coast Guard

Transport and Pipeline Safety

Environmental Protection Agency

Regional Administrator, Region I

U. S. Water Resources Council

Department of Health, Education and Welfare

Public Health Service

Department of Housing and Urban Development

Nuclear Regulatory Commission

Department of Justice

Energy Research and Development Administration

Federal Energy Administration

Federal Power Commission

General Services Administration

National Aeronautics and Space Administration (remote sensing)

Advisory Council on Historic Preservation

Federal-State

New England River Basins Commission

State

Maine

Department of Agriculture

Department of Commerce and Industry

Department of Conservation

Department of Environmental Protection

Department of Inland Fisheries and Game

Department of Marine Resources

Department of Transportation

State Planning Office

Public Utilities Commission

State Department of Finance and Administration - Bureau of Property Taxation

Regional Planning Commissions

Eastern Mid-Coast RPC

Hancock County RPC

Greater Portland Council of Government

Penobscot Valley RPC

Southern Maine RPC

Southern Mid-Coast RPC

Washington County RPC

Southern Kennebec County RPC

Other Parties

American Institute of Planners  
Appalachian Mountain Club  
Associated Industries of Maine  
Casco Bay Island Development Association  
Environmental Defense Fund  
Izaak Walton League  
League of Women Voters  
Maine Association of Conservation Commissions  
Maine Association of Soil and Water Conservation District Supervisors  
Maine Audubon Society  
Maine Coast Heritage Trust  
Maine Farm Bureau  
Maine Fish and Game Association  
Maine Mid-Coast Route 1 Association  
Maine Times  
Merrymeeting Audubon Society  
Mid-Coast Audubon Society  
National Audubon Society  
National Environmental Defense Fund  
National Resources Council  
National Resources Council of Maine  
National Wildlife Federation  
Natural Resources Defense Council  
Nature Conservancy, The  
Rockland Chamber of Commerce  
Sheepscot Valley Conservation Association  
Sierra Club  
Spiker, LaRue, Ms.  
State Biologist Association  
TRIGOM

6. Draft Statement transmitted to the Council on Environmental Quality on March 21, 1975, and made available to the public on March 28, 1975. A public hearing will be held on this proposal on May 5, 1975, at 7:30 p.m. in the Wiscasset Municipal Building, Wiscasset, Maine and on May 6, 1975, at 7:30 p.m. in the Ellsworth City Hall, Ellsworth, Maine.

# TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION . . . . .	1
II. DESCRIPTION OF THE PROPOSED ACTION . . . . .	2
III. DESCRIPTION OF THE ENVIRONMENT AFFECTED . . . . .	25
IV. RELATIONSHIP OF THE PROPOSED ACTION TO LAND USE PLANS POLICIES AND CONTROLS FOR THE AREA . . . . .	35
V. PROBABLE IMPACT OF THE PROPOSED ACTION ON THE ENVIRONMENT . . . . .	37
VI. ALTERNATIVES . . . . .	44
A. Federal Alternatives to Approval of the Maine Coastal Zone Management Program . . . . .	44
B. Implementation and Control Alternatives for the State Coastal Zone Management Program . . . . .	47
C. Alternatives to Proposed Program Elements. . . . .	49
VII. PROBABLE ADVERSE ENVIRONMENTAL EFFECTS WHICH CANNOT BE AVOIDED . . .	51
VIII. RELATIONSHIP BETWEEN LOCAL SHORT-TERM USES OF THE ENVIRONMENT AND THE MAINTENANCE AND ENHANCEMENT OF LONG-TERM PRODUCTIVITY . .	52
IX. IRREVOCABLE OR IRRETRIEVABLE COMMITMENTS OF RESOURCES THAT WOULD BE INVOLVED IN THE PROPOSED ACTION SHOULD IT BE IMPLEMENTED . . .	52
X. CONSULTATION AND COORDINATION WITH OTHERS . . . . .	53
XI. PUBLIC HEARING . . . . .	54

## REFERENCES

## APPENDIX

1. Federal Coastal Zone Management Act of 1972 (P.L. 92-583)
2. Final Guidelines, Coastal Zone Management Program Administrative Grants
3. Revised planning and zoning statutes in Maine
4. Proposed Executive Order establishing a Governor's Cabinet  
Committee on Land Use
5. An Introduction to the Maine Coastal Plan

## I. INTRODUCTION

In response to the intense pressures upon, the conflicts within, and the importance of the coastal zone of the United States, the Congress in 1972 passed the Coastal Zone Management Act (P.L. 92-583; 86 Stat. 1280; hereinafter referred to as the Act; included as Appendix 1). Signed into law by President Nixon on October 27, 1972, the Act authorized a new Federal program to be administered by the Secretary of Commerce, who in turn delegated this responsibility to the National Oceanic and Atmospheric Administration (NOAA).

The Act affirms a national interest in the effective management, beneficial use, protection, and development of the coastal zone, and provides assistance and encouragement to the coastal states to develop and implement rational programs for managing their coastal zones. Three financial assistance grant programs are authorized by the Act. Section 305 authorizes annual grants to assist any United States coastal state or territory in the development of a management program for the land and water resources of its coastal zone (program development grants). Under Section 306, after developing a management program, the state may submit it to the Secretary of Commerce for approval; if approved, the state is then eligible for annual grants to administer its management program (program administration grants). A third section (Section 312) provides grants for an estuarine sanctuary program, to preserve a representative series of undisturbed estuarine areas for long-term scientific and educational purposes.

As an additional incentive for state participation, the Act stipulates that Federal actions within the coastal zone shall be, to the maximum extent feasible, consistent with approved state management programs (the "Federal consistency" requirement, Section 307).

Guidelines defining the procedures by which states can qualify to receive development grants under Section 305 of the Act, and the policies for development of a state management program, were published on November 29, 1973 (15 CFR Part 920, Federal Register 38(229):33044-33051). By the end of Fiscal Year 1974, 28 of 34 coastal states and territories had received program development grants.

Guidelines for the implementation of the estuarine sanctuary program were published on June 4, 1974 (15 CFR Part 921, Federal Register 39(108):1922-1927), and the first estuarine sanctuary grant was awarded to the State of Oregon on June 27, 1974.

On January 9, 1975, NOAA's Office of Coastal Zone Management (OCZM) published criteria to be used for approving state coastal zone management programs and guidelines for program administrative grants (15 CFR Part 923, Federal Register 40(6):1683-1695; see Appendix 2). These proposed criteria and guidelines set forth (a) the standards to be utilized by the Secretary of Commerce in reviewing and approving coastal zone management programs developed and submitted by coastal states for approval, (b) procedures by which coastal states may qualify to receive program administrative grants, and (c) policies for the administration by coastal states of approved coastal zone management programs.

Pursuant to the Section 306 guidelines, OCZM has now received for review and Secretarial approval, proposed coastal zone management programs, in varying stages of completion, from four states for all or part of their coasts: Washington, Oregon, the mid-coast segment of Maine (seeking segmented approval), and the San Francisco Bay Area Conservation and Development Commission (also seeking segmented approval).

The OCZM has determined that approval of a state's coastal zone management program, with resultant impacts of potential funding, consistency of Federal actions and permits, and ultimately land-use in toto, has the potential for causing a significant impact on the environment, and that, therefore, an environmental impact statement should be prepared pursuant to the National Environmental Policy Act (NEPA). This environmental impact statement is intended to present for review by interested parties the State of Maine's coastal zone management program and its application for approval of the program for the state's mid-coast region, under Section 306 of the Coastal Zone Management Act. Because of the nature of the Maine program submission, which consists largely of guidelines, state technical assistance to the regional level, and coordinative mechanisms for implementation, as well as the nature of the Federal program approval itself, which focuses more upon the procedure which the state has used to develop its program rather than its substance, this environmental statement is necessarily different from and more general than the more usual, project-oriented EIS.

## II. DESCRIPTION OF THE PROPOSED ACTION

### A. The Federal Coastal Zone Management Program

The enactment of the Coastal Zone Management Act of 1972 culminated a lengthy history of Federal interest in and concern for the coastal zone and its resources. Significant national interest can be traced from the Committee on Oceanography of the National Academy of Sciences' (NASCO) 12-volume report, "Oceanography 1960-1970," (1959) to the Report of the Commission on Marine Science, Engineering, and Resources (1969), which proposed that a Coastal Management Act be enacted that would "provide policy objectives for the coastal zone and authorize Federal grants-in-aid to facilitate the establishment of State Coastal Zone Authorities empowered to manage the coastal waters and adjacent land." (p.56) The National Estuarine Pollution Study (1969), authorized by the Clean Water Restoration Act of 1966, and the National Estuary Study (1970), authorized by the Estuarine Areas Study Act of 1968, further documented the importance of the conflicting demands upon our Nation's coasts. Together these reports stressed the need to protect and wisely use these important national resources, and concurred that a specific program designed to promote the thoughtful protection and management of our coastal zone was necessary.



In response to these recommendations, the first legislative proposals for coastal management programs were introduced in 1969. Long and extensive hearings were held on these and subsequent bills during the next three years (e.g.: House 91-14, 91-46, and 92-16; Senate 92-15, 92-753, and 92-1049). The overwhelming support for the final Act (P.L. 92-583), which passed 68-0 in the Senate and 376-6 in the House, clearly reflected the need for decisive action in the coastal zone.

The Act opens by stating that "There is a national interest in the effective management, beneficial use, protection, and development of the coastal zones." (Section 302(a)). The statement of Congressional findings goes on to describe how competition for the utilization of coastal resources, brought on by the increased demands of population growth and economic expansion, has led to the degradation of the coastal environment, citing "loss of living marine resources, wildlife, and nutrient-rich areas, permanent and adverse changes to ecological systems, decreasing open space for public use, and shoreline erosion." The Act then states that the "key to more effective protection and use of the land and water resources of the coastal zone is to encourage the states to exercise their full authority over the lands and waters in the coastal zone by assisting the states . . . in developing land and water use decisions with more than local significance." (Section 302(h)).

While local governments and Federal agencies are required to cooperate, coordinate and participate in the development of the management programs, the state level of government is clearly given the central role and responsibility for this process. The Act provides a number of incentives and means of achieving these objectives and policies. Under Section 305 it enables the 30 coastal states (Great Lakes states are included) and four coastal territories to receive grants from NOAA to cover two-thirds of the costs of developing coastal zone management programs. Broad guidelines and minimum requirements in the Act provide the necessary direction for developing these programs. For example, during the program development, each state must address specific issues such as the boundaries of its coastal zone; geographic areas of particular concern; permissible and priority land and water uses, including specifically those uses that are undesirable or of lowest priority; and areas for preservation or restoration. During the planning process, the state is directed to consult with local, regional, and relevant Federal agencies and governments, and general public interests. These annual grants can be renewed twice, so that Federal support can be provided to states for up to three years for this program development phase.

Upon completion and adoption of the management program by the state, and after approval by the Secretary of Commerce, states and territories are eligible under Section 306 to receive administrative grants (presumably in greater amounts than for program development) to cover two-thirds of the costs of implementing these programs. The criteria for approval of state coastal zone management programs and guidelines for applying for program administrative grants are provided in Appendix 2. The states' administration of their programs will be reviewed annually by OCZM and, as long as they are administered consistently with the approved management program, the states will remain eligible for annual administrative grants.

The Act provides that the views of Federal agencies principally affected by such programs must be adequately considered by the Secretary of Commerce in his review and approval of the management program. The Department has established a formal review process to receive the comments from such Federal agencies and to resolve any serious disagreements. (15 CFR Part 925, Interim Regulations. Federal Register, Vol. 40, No. 41, February 28, 1975).

Evaluation of a state's program in terms of compliance with the statutory requirements established in the Act and guidelines will concentrate primarily upon the adequacy of state processes in dealing with key coastal problems and issues. It will not, in general, deal with the wisdom of specific land and water use decisions, but rather with a determination that in addressing those problems and issues, the state is aware of the full range of present and potential needs and uses of the coastal zone, and has developed procedures, based upon scientific knowledge, public participation and unified governmental policies, for making reasoned choices and decisions.

Management programs will be evaluated in the light of the Congressional findings and policies as contained in Sections 302 and 303 of the Act. These sections make it clear that Congress in enacting the legislation was concerned about the environmental degradation, damage to natural and scenic areas, loss of living marine resources and wildlife, decreasing open space for public use, and shoreline erosion being brought about by population growth and economic development. The Act thus has a strong environmental thrust, stressing the "urgent need to protect and to give high priority to natural systems in the coastal zone." A close working relationship between the agency responsible for the coastal zone management program and the agencies responsible for environmental protection is vital in carrying out this legislative intent. States are encouraged by the Act to take into account ecological, cultural, historic and esthetic values as well as the need for economic development in preparing and implementing management programs through which the states, with the participation of all affected interests and levels of government, exercise their full authority over coastal lands and waters.

In addition, the Act provides coastal states and territories with the opportunity to apply for grants to cover one-half of the costs of acquisition, development and operation of estuarine sanctuaries, wherein natural field laboratories are established in order that scientists and students may be provided the opportunity to examine over a period of time ecological relationships in representative undisturbed estuaries of the coastal zone.

Although signed in October 1972, the implementation of the Federal Coastal Zone Management Program was delayed by the Administration's decision not to request appropriations for the remainder of FY 1973 or FY 1974. This decision was made on the grounds that more information on the nature and extent of state activities and needs was required before committing funds, and because of the desire by the Administration to coordinate or subsume the operation of the coastal zone management program with or under the then pending land-use legislation. Eventually in response to the pressing needs and demands in the coastal zone, and in view of apparent action on the land-use legislation, the President in August 1973, forwarded an amended budget request to Congress requesting \$5 million to begin implementation of the Coastal Zone Management Act. This request was amended by Congress to provide a final

appropriation of \$12 million for FY 1974, and was signed by the President on November 27, 1973. About \$7.2 million of this total was for program development grants (Section 305), \$4 million for estuarine sanctuary grants, and \$800,000 for program administration within NOAA.

The OCZM budget for FY 1975 remained at \$12 million, distributed, however, as \$9 million for program development, \$2.1 million for state program administration grants, and \$900,000 for internal NOAA program administration. About \$3.2 million remained available in the estuarine sanctuary program as carry over funds from FY 1974. Currently 29 of the 30 eligible states, and two of four eligible territories have received grants under the program. Grant awards through February 1975 are summarized in Table I.

#### B. The Maine Coastal Zone Management Program

Maine's coastal zone management (CZM) program began in 1969 with adoption of the "Maine Coastal Development Plan - Work Program" and has progressed through various executive, legislative and research phases to the point where the first of four coastal management areas, the Mid-Coast Segment, is being proposed for approval. (See Fig. 1 for a depiction of the mid-coast segment.) The State Planning Office (SPO) has the lead role in the development of the management program and is the single state agency applying for approval. However, the program has been developed with the participation of Federal, state, regional, and local agencies, as well as with the involvement of citizens and interest groups. As the State began to develop its CZM program, the SPO identified three major problems facing the Maine coast. These were:

- The lack of an objective, workable resource data base;
- The absence of public consensus on policy for guiding land and water management and enforcement activities; and
- An overburdened state and local regulatory and enforcement network.

The Maine coastal plan and program has been developed to address these problems as rapidly as possible. In essence, Maine's approach to coastal zone management has been to pull together existing authorities, provide a sound resource data base for planning and decision-making, and coordinate the various state and regional agencies and their responsibilities. The program will be further refined as a continuing process, guided by flexible but basic goals and objectives. The following excerpt from the SPO's publication, "An Introduction to the Maine Coastal Plan," (included in the Appendix) summarizes these goals and objectives:

#### Goal:

To develop a comprehensive plan providing for compatible and multiple uses of the coastal zone, optimizing those intrinsic and real values assuring the greatest long-term social and economic benefits for the people of the State of Maine.

TABLE I

Status of Grant Awards, Office of Coastal Zone Management  
(including amendments approved through February 1975)

<u>FY 1974</u>				
<u>Section 305</u>				
<u>State or Territory</u>	<u>Date Awarded</u>	<u>Federal Share</u>	<u>Matching Share</u>	<u>Total Program</u>
Rhode Island	3/13/74	\$154,415	\$77,208	\$231,623
Maine	3/13/74	\$230,000	\$115,000	\$345,000
Oregon	3/13/74	\$250,132	\$141,214	\$391,346
California	4/23/74	\$720,000	\$371,946	\$1,091,946
Mississippi	4/23/74	\$101,564	\$50,782	\$152,346
Michigan	4/23/74	\$330,486	\$203,961	\$534,447
South Carolina	5/10/74	\$198,485	\$100,015	\$298,500
Maryland	5/10/74	\$280,000	\$185,765	\$465,765
Washington	5/14/74	\$388,820	\$194,410	\$583,230
Texas	5/16/74	\$360,000	\$191,648	\$551,648
Ohio	5/21/74	\$200,000	\$166,300	\$366,300
Massachusetts	6/4/74	\$210,000	\$105,000	\$315,000
Connecticut	6/5/74	\$194,285	\$130,359	\$324,644
New Hampshire	6/7/74	\$78,000	\$39,000	\$117,000
Hawaii	6/10/74	\$250,000	\$125,000	\$375,000
Georgia	6/13/74	\$188,000	\$115,400	\$303,400
Delaware	6/14/74	\$166,666	\$83,334	\$250,000
Florida	6/14/74	\$450,000	\$285,853	\$735,853
Wisconsin	6/20/74	\$208,000	\$145,215	\$353,215
Pennsylvania	6/20/74	\$150,000	\$75,000	\$225,000
Alabama	6/20/74	\$100,000	\$50,000	\$150,000
Minnesota	6/21/74	\$99,500	\$49,750	\$149,250
North Carolina	6/21/74	\$300,000	\$200,000	\$500,000
Illinois	6/24/74	\$206,000	\$103,000	\$309,000
Alaska	6/26/74	\$600,000	\$300,000	\$900,000
Louisiana	6/26/74	\$260,000	\$134,090	\$394,090
Puerto Rico	6/26/74	\$250,000	\$125,000	\$375,000
New Jersey	6/27/74	\$275,000	\$137,500	\$412,500
<u>Section 312</u>				
Oregon	6/27/74	\$823,965	\$823,965	\$1,647,930
<u>FY 1975</u>				
<u>Section 305</u>				
Virginia	8/14/74	\$251,044	\$125,522	\$376,566
New York	11/8/74	\$550,000	\$275,000	\$825,000
Virgin Islands	11/26/74	\$90,000	\$45,000	\$135,000
*Oregon	2/11/75	\$158,811	\$79,406	\$238,217

\*Second grant award.

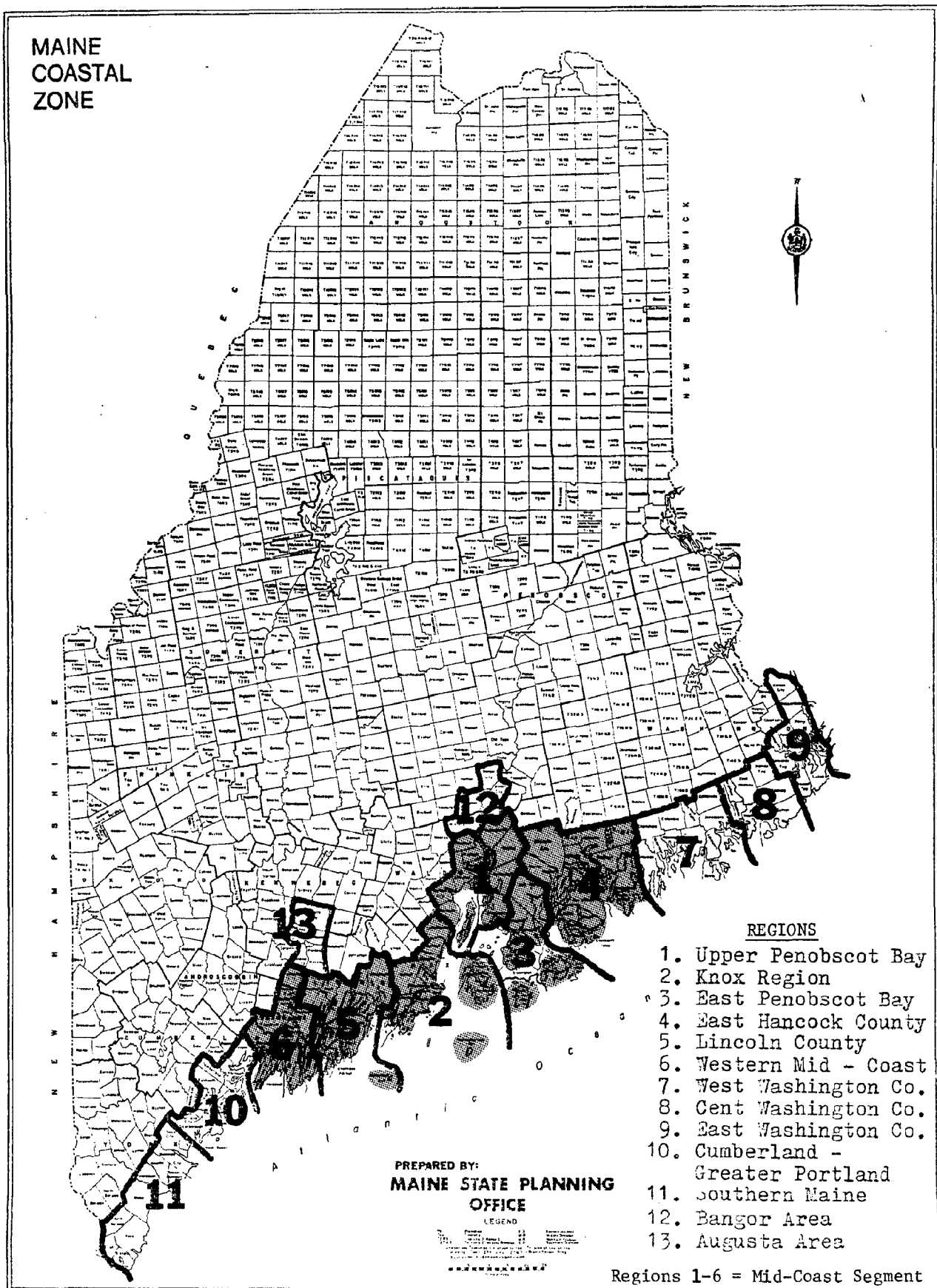


FIGURE 1

**Table II**  
**Areas of Specific State Concern**

<p><b>I. Hazard Areas:</b></p> <ol style="list-style-type: none"> <li>1. Floodplains</li> <li>2. Other hazard areas</li> </ol>	<p><b>II. Areas of scientific, historic, and prehistoric significance:</b></p> <ol style="list-style-type: none"> <li>1. Areas of scientific significance</li> <li>2. Areas of historic and prehistoric significance</li> </ol>
<p><b>III. Areas of scenic or visual significance:</b></p> <ol style="list-style-type: none"> <li>1. Significant scenic vistas, foreground components, and viewpoints</li> <li>2. Significant scenic or aesthetic areas or sites</li> </ol>	<p><b>IV. Areas where development affects the public and which are under intense development</b></p> <ol style="list-style-type: none"> <li>1. Shoreland areas as defined in state law</li> <li>2. Areas within 250 feet of federal and state highways</li> <li>3. Approach and egress routes of town centers</li> </ol>
<p><b>V. Areas with economically valuable or potentially valuable natural resources:</b></p> <ol style="list-style-type: none"> <li>1. Areas with valuable mineral resources</li> <li>2. Aquaculture sites</li> <li>3. Significant agricultural areas</li> </ol>	<p><b>VI. Ecologically Sensitive Areas:</b></p> <ol style="list-style-type: none"> <li>1. Wetlands</li> <li>2. Beach and dune systems</li> <li>3. Shoreland areas especially vulnerable to erosion or slumping</li> <li>4. Other significant, ecologically sensitive areas</li> </ol>
<p><b>VII. Areas which offer significant recreational opportunities:</b></p> <ol style="list-style-type: none"> <li>1. Significant beaches</li> <li>2. Heavily used footpaths</li> <li>3. Other areas which offer significant recreational opportunities</li> </ol>	<p><b>VIII. Routes of Public Access:</b></p> <ol style="list-style-type: none"> <li>1. Existing routes of public access</li> <li>2. Potential routes of public access</li> </ol>
<p><b>IX. Important Habitats:</b></p> <ol style="list-style-type: none"> <li>1. Deer wintering areas</li> <li>2. Waterfowl nesting areas</li> <li>3. Waterfowl overwintering areas</li> <li>4. Clam flats</li> <li>5. Worm flats</li> <li>6. Lobster concentration areas</li> <li>7. Scallop concentration areas</li> <li>8. Other important habitats</li> </ol>	<p>Where possible, the relative importance of these areas will also be indicated on the Synthesis map. Three categories of importance will be used: (1) high importance; (2) of higher importance; and, (3) of highest importance.</p> <p>Where it is not possible to categorize the importance of areas, this rating will be omitted.</p>

Objectives:

1. Inventory coastal resources and existing uses.
2. Develop a resource classification system with appropriate uses and development standards as a basis for regulating activities within the coastal zone.
3. Identify areas of major and impending conflicts and indicate priorities for immediate action.
4. Propose regulations and controls to insure that coastal resources will be used in a manner that is consistent with their natural character and ecological relationships.
5. Elicit public views and interests through public hearings and other concurrent planning.
6. Coordinate efforts with other New England coastal states.
7. Propose institutional arrangements, state legislation, and local ordinances necessary to implement the Maine Coastal Plan.

Maine's basic approach to CZM may be summarized as follows:

1. Primary state attention should focus upon coordinating existing laws and authorities, and providing them with additional financial, technical, and administrative assistance.
2. A unified regulatory system should be developed based on an objective resource inventory and classification system.
3. The program should balance regional and local implementation with increased state authority in specific areas of statewide concern, such as critical areas designation, water quality, wetlands regulation, and public lands.
4. The SPO through the regional planning commissions should provide technical assistance to state and local regulatory agencies and should administer local grants.

The specific framework for developing and administering Maine's CZM program derives from a variety of laws and administrative actions. Four basic state laws form the foundation for the program. These are: (1) the Site Location of Development Act; (2) the Mandatory Shoreland Zoning Act; (3) the Wetlands Protection Act; and (4) the Registry of Critical Areas Act. These and other appropriate state laws will be administered in a coordinated fashion, to achieve comprehensive management objectives which are explicitly defined in an Executive Order proposed by the Governor. The Cabinet Committee on Land Use, established by this Executive Order, will coordinate state land-use policy, taking appropriate measures to incorporate CZM's natural resource analysis for coastal areas. These four acts, and the draft Executive

Order, of fundamental importance to the Maine program, are presented in Appendices 3 and 4).

To insure the necessary coordination of the various state planning, regulatory, and enforcement activities, the central state agencies, including the Board of Environmental Protection, the Shoreland Zoning Policy Task Force, the Land Use Regulation Commission, and the Critical Areas Registry Board, have adopted policy statements which provide that the coastal zone management policy and natural resource analysis will be incorporated into decisions made by these agencies.

Appropriate regional planning commissions will also adopt policy statements supporting the state coastal zone management program and stating a willingness to expand their land-use management service and coordination role to serve as the focus for implementing the state CZM program.

To provide the necessary resource data base for the CZM program and decision-making, the SPO has undertaken a comprehensive resources inventory. Data on the following natural resources have been gathered and mapped for the mid-coast segment, and are being completed for the other coastal segments:

- Geological resources
- Slopes and Soils
- Hydrology, including drainage/watershed, groundwater, water quality classification, and coastal lakes
- Land-use types
- Living resources, including wildlife habitats, marine environments, and marine resources
- Scenic resources
- Recreational resources.

These resource maps will be compiled into a coastal resource atlas.

Socio-economic aspects of the coastal zone are also being inventoried. These will include the following major elements: population, taxation, land-use, economics, housing, transportation, education, and recreation.

The SPO has analyzed the data from the resource inventory and mapping effort and synthesized it into maps intended to guide land-use decision-making. These maps show Areas of Particular State Concern and the Suitability of Areas for Activities of Major State Concern. The Areas of Particular State Concern include nine major elements (Table II) and identify conflict areas which are of more than local concern. Three Activities of Major Concern have been identified (Table III) and individually mapped according to whether areas are suitable, of intermediate suitability, or unsuitable for the major activities. Several maps are used to portray the various data and conclusions for a small portion of the coast. Because these maps are at a scale of 1:48,000 several sets will be necessary to cover the entire coast. Examples of the synthesis



TABLE III

SUITABILITY OF LAND AND WATER AREAS FOR SELECTED  
ACTIVITIES OF MAJOR CONCERN

Purpose: to indicate the suitability of land and water areas for selected activities of major concern from the perspective of resource capabilities and preventing use conflicts of more than local concern.

I. The Suitability of Land Areas for Selected Large-scale Development Activities

A. Selected Activities of Major Concern:

1. Construction of large buildings such as industrial plants, warehouses, port facilities, power plants, commercial complexes, office buildings, shopping centers, and others similar.
2. Large residential developments or subdivisions with septic sewage disposal.
3. Large residential developments or subdivisions with sewage collection systems.

B. Categories Into Which Area is Divided:

1. Areas which are suitable for siting large buildings.
2. Areas which are of intermediate suitability for siting large buildings.
3. Areas which are unsuitable for siting large buildings.
4. Areas which are suitable for subdivisions with septic sewage disposal.
5. Areas which are of intermediate suitability for subdivisions with septic sewage disposal.
6. Areas which are unsuitable for subdivisions with septic sewage disposal.
7. Areas which are suitable for subdivisions with sewage collection systems.
8. Areas which are of intermediate suitability for subdivisions with sewage collection systems.
9. Areas which are unsuitable for subdivisions with sewage collection systems.

C. Considerations in Determining Suitability:

1. Soil conditions.
2. Surficial and bedrock geologic conditions.
3. Presence or absence of hazards.
4. Presence or absence of potential conflicts between development activity and significant public values.

Note that categories in Section B are not mutually exclusive, e.g., an area might be classified in categories 1, 4, and 7.

maps, which will form the basis for CZM program decision-making at the local and state levels, are included in Figures 2 through 6.

### Segmentation

The inventory and analysis process above has been conducted comprehensively on a region by region basis, rather than coastwide, factor by factor, to enable a more rapid synthesis and more immediate use. This process has been completed for the mid-coast segment of Maine, which extends from the Hancock County coastal community of Gouldsboro to Brunswick in Cumberland County. In order to begin implementation of the CZM program in this region Maine is requesting approval for this segment of its coast.

The segment includes more than 60% of the Maine shoreline and nearly 30% of its coastal population. The segment is a geo-political and resource unit which incorporates regions adopted by the state for planning, management, and service delivery. The state has a plan and timetable for completing the remaining segments of the Maine CZM program. Completion of the Washington County, Cumberland County and York County segments is scheduled for December 1975. The final two areas of the coastal zone, the Penobscot and Kennebec coastal river areas, are scheduled for completion by June 1976. In general terms, the southwestern segment of the Maine coastal zone is already significantly developed. The northeastern segment by contrast is far enough away from the larger northeast population centers to escape immediate urbanization and development pressure. The mid-coast segment experiences more pressure and conflict, is the most diverse environmentally and socially, and is consequently in more urgent need of effective management than the other segments of the Maine coast. Due to these factors, its size, the availability of data, and its proximity to the center of government, the state chose to begin the coastal management program in the mid-coast segment and then extend the knowledge and experience there to develop and refine a CZM program for the remaining northeastern and southwestern coastal segments.

### Elements of the Program

The primary purpose of this program is to address resource planning and management problems of state concern. These include the management of conflict areas where state interests are involved, the siting of large-scale developments such as those requiring approval under the Site Location of Development Act, the administration of the Shoreland Zoning Act and the Land Use Regulation Act, and guiding the general pattern of resource use at a regional scale.

Another purpose is to provide a versatile information base for planning by regional planning commissions, municipalities, and other organizations and individuals. Still another purpose, which is both supplemental to and an integral part of the two above, is to educate the public and public officials as to resource planning considerations and issues.

### Boundary

The boundary of Maine's CZM program was developed from a combination of local political and physical features. The areas most directly managed and the relevant authorities are:

- a) Upland areas: all uses within 250' from mean high water - locally regulated - state approval and review required (Mandatory Shoreland Zoning Act of 1971).
- b) Upland areas: high impact uses, first tier of towns on tidewater - state approval and review required with local comment for developments in excess of 60,000 square feet and subdivisions larger than 20 acres (Site Location of Development Act).
- c) Intertidal areas: all proposed alterations, entire area to the reach of tidal influence - state approval and review required with local comment (Wetland Control and Protection Act of 1972).
- d) Offshore areas: three nautical miles - special Governor's committee coordinating state agency responsibilities and authorities.

Excluded from the state CZM boundary are all Federal lands in the coast, such as Acadia National Park, Federal Wildlife Refuges, and Brunswick Naval Air Station.

In essence, uses of the immediate shoreland are subject to local control according to state guidelines and criteria under the Mandatory Shoreland Zoning Act of 1971. High intensity uses within and beyond the immediate shoreline (250 feet) and within the first tier of towns on tidewater (extending inland perhaps 10 miles) are directly regulated by the state in accordance with the provisions of the state's Site Location of Development Act. Thus defined, Maine's coastal zone is a strip about 10 miles wide (13 miles including the territorial sea) along the coastal and tidewater areas, and includes 140 town or minor civil divisions.

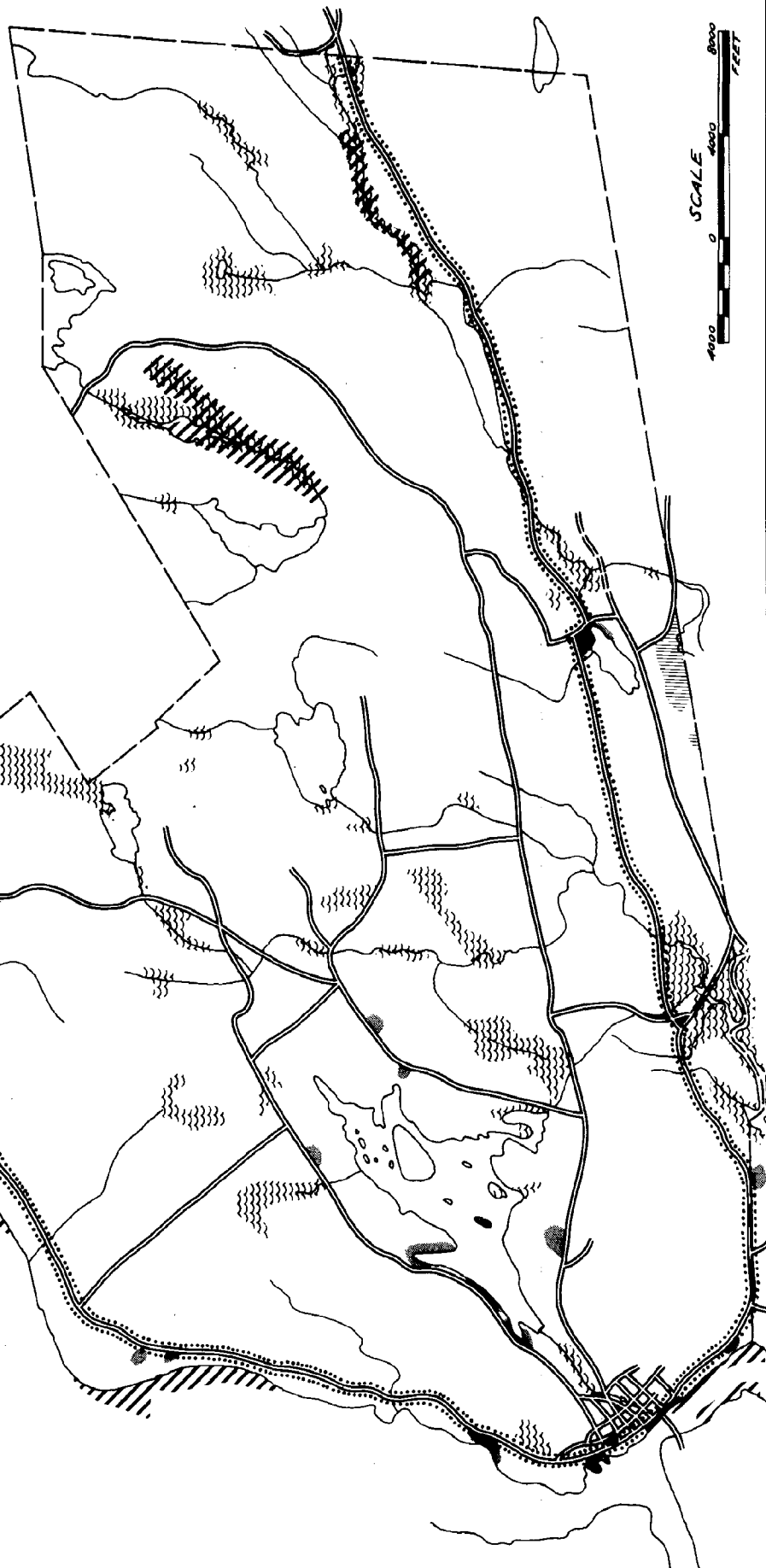
### Permissible Land and Water Uses

Maine's methodology for addressing the impacts of existing, projected and potential uses and arriving at what constitutes permissible land and water use is based upon its resource inventory and capability, suitability and synthesis analysis. This approach serves to guide an array of legal controls, both state and local, in applying performance standards and criteria to development proposals.

# TOWN OF BUCKSPORT

AREAS OF  
PARTICULAR CONCERN

- WATERFOWL NESTING AREAS
- FLOOD PLAINS
- AREA 250' OF STATE OR FEDERAL HWY
- SCENIC AREAS AND VIEWPOINTS
- HISTORIC SITE
- SCIENTIFIC SIGNIFICANCE

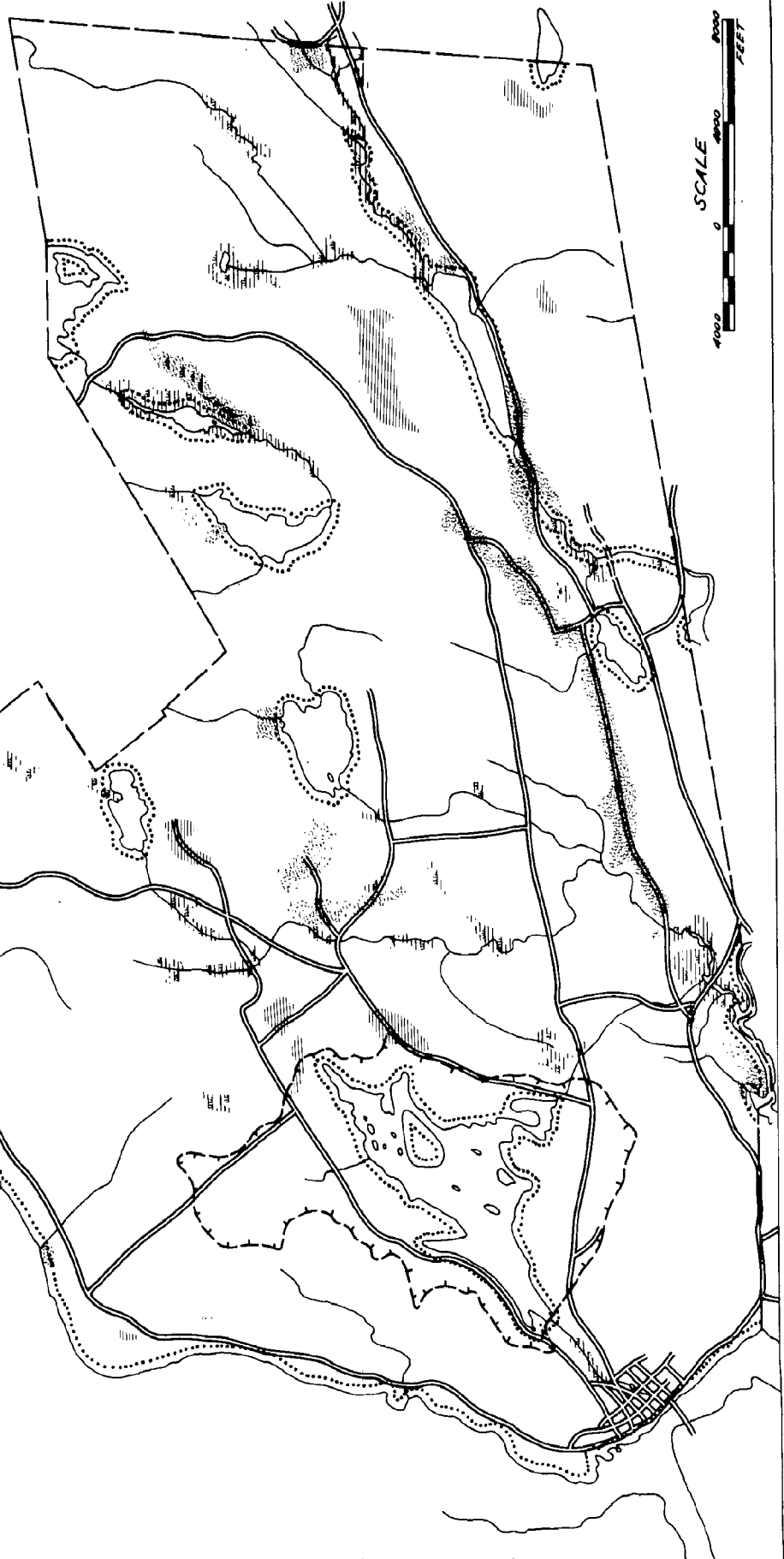


SCALE  
0 4000 8000  
FEET

# TOWN OF BUCKSPORT

AREAS OF  
PARTICULAR CONCERN

WATERSHED BOUNDARY OF WATER SUPPLY POND  
SHORELAND AREA AS DEFINED BY STATE LAW  
WETLANDS  
MINERAL RESOURCES  
AGRICULTURAL AREAS



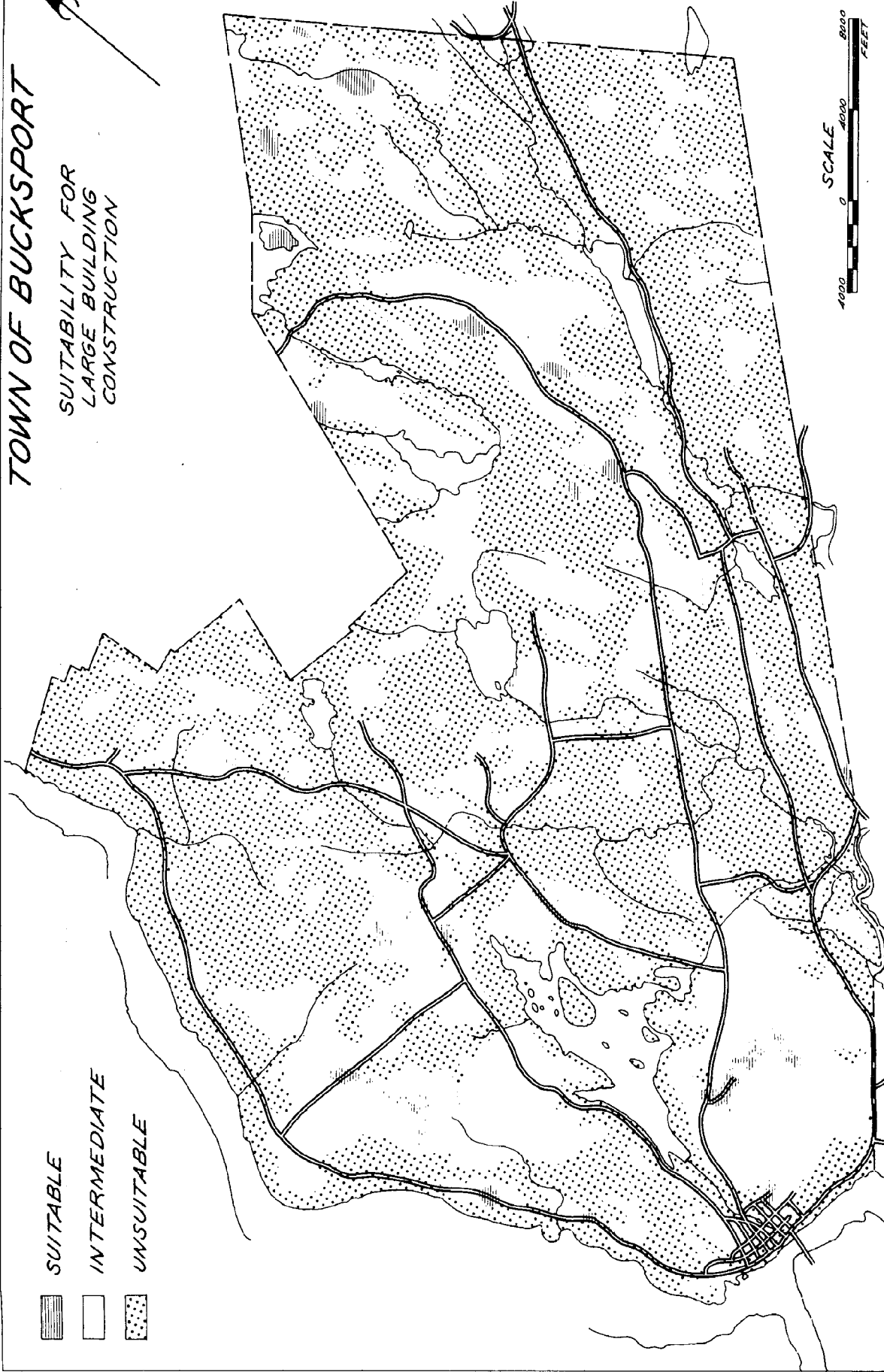
# TOWN OF BUCKSPORT

SUITABILITY FOR  
LARGE BUILDING  
CONSTRUCTION

SUITABLE

INTERMEDIATE

UNSUITABLE



SCALE  
0 4000 8000  
FEET

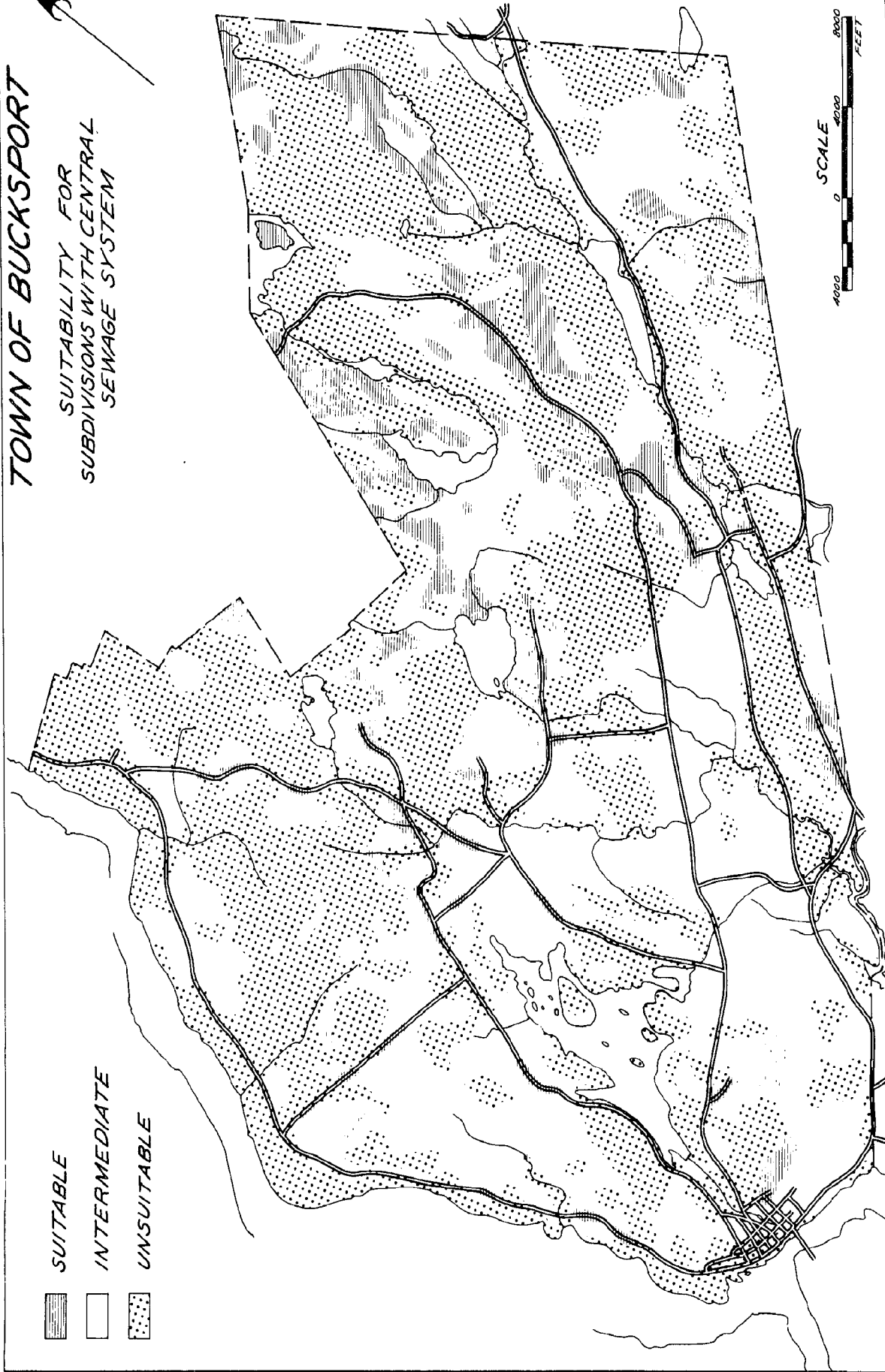
# TOWN OF BUCKSPORT

SUITABILITY FOR  
SUBDIVISIONS WITH CENTRAL  
SEWAGE SYSTEM

SUITABLE

INTERMEDIATE

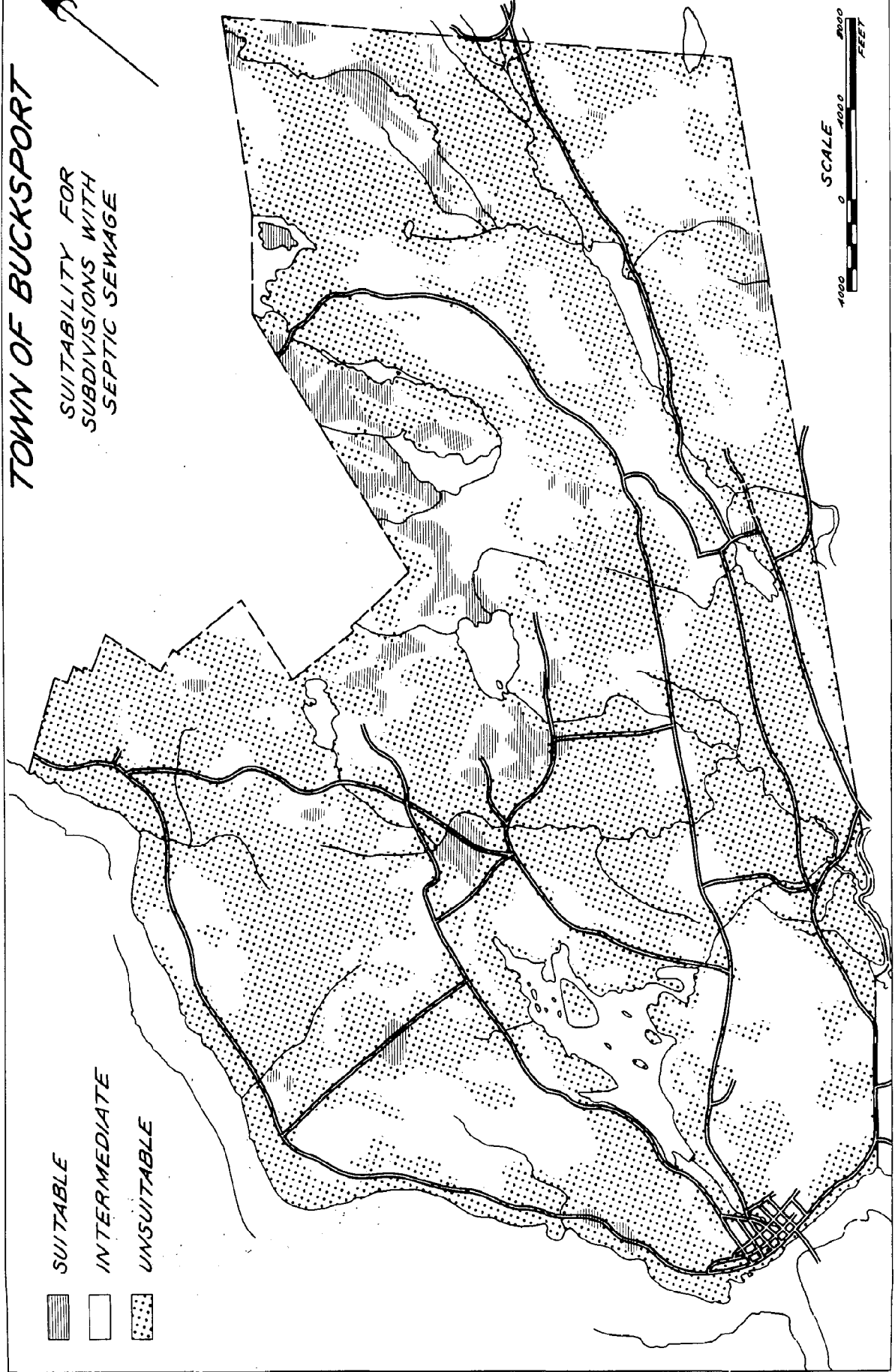
UNSUITABLE



# TOWN OF BUCKSPORT

SUITABILITY FOR  
SUBDIVISIONS WITH  
SEPTIC SEWAGE

- SUITABLE
- INTERMEDIATE
- UNSUITABLE



SCALE 0 1000 2000  
FEET



Uses of the immediate shoreland are subject to local control, but according to state guidelines and criteria under the Mandatory Shoreland Zoning Act of 1971. High intensity uses within and beyond the immediate shoreline (250') and within the first tier of town on tidewater are directly regulated by the state in accordance with the provisions of the state's Site Location of Development Act.

In essence, the management program has not excluded any particular uses from the coastal zone as a whole, but has focused upon restricting uses to suitable areas. Even where an area appears capable of accommodating specific classes of use stringent performance standards are applied to proposals.

Three principal land and resource features are involved in making these determinations:

1. Soil and surficial geological material which are either improperly drained, unstable, or otherwise unsuitable for construction and maintenance of large buildings;
2. Bedrock geologic conditions which are either waterbearing, unstable, or otherwise unsuitable for the construction and maintenance of large buildings;
3. Locations on or in flood plains, areas of scientific significance, areas of historic and prehistoric significance, significant scenic or aesthetic areas, the foregrounds of significant views, wetlands, significant beach areas or beach and dune systems, shoreland areas especially vulnerable to erosion or slumping, other significant ecologically sensitive areas, and significant wildlife habitats (including deer wintering areas and waterfowl nesting areas).

An additional principal criterion for determining use suitability is an assessment of surface or subsurface waters to determine their capacity to assimilate currently unavoidable discharges of pollutants from development activities.

#### Areas of Particular State Concern

Based upon a review of natural and manmade coastal zone resources and uses, and upon consideration of state established criteria, areas of specific state concern have been identified.

In general terms, areas of particular state concern consist of conflict areas, areas where existing or potential uses may affect the state community as a whole, areas where hazards exist and areas of unique, fragile, valuable, or scenic resources. These areas are all delineated on the synthesis maps, an example of which is included in Figures 2 and 3.

### Guidelines on Priority of Uses

The Maine management program includes broad policies and guidelines governing the relative priorities which will be applied in the coastal zone. The priorities are based upon an ongoing analysis of state and local needs as well as the effect of the uses on the area's resources. The establishment of specific priorities according to particular areas, however, is a dynamic, continuous process of goal formulation and interaction at all levels of government. The major instrument for refining and clarifying coastal priorities will be the Governor's Cabinet Committee on Land Use and the Commission on Maine's Future.

Characteristic examples of priorities already established by law are the following:

- ". . . the State of Maine has an overriding interest in the optimum development and preservation of certain land and water areas of the state. . . sites or areas of unusual natural scenic, scientific, or historical significance are areas of such overriding state interest." (Critical Areas Registry Act)
- ". . . the police powers of the state (are to be exercised) to control, abate, and prevent the pollution of air, waters, and coastal flats, and prevent diminution of the highest and best use of the natural environment of the state." (Site Location of Development Act)
- ". . . the highest and best uses of the seacoast of the state are as a source of public and private recreation and solace from the pressures of an industrialized society, and as a source of public use and private commerce in fishing, lobstering, and gathering other marine life used and useful in food production and other commercial activities." (Coastal Conveyance of Petroleum Act).

Table IV summarizes the priorities the CZM program will use, subject to refinement and clarification at the state and regional scale.

### Area Designation for Preservation and Restoration

Under the auspices of The Nature Conservancy and later the Smithsonian Institute, and using as a model the English coastal experience, the Maine State Planning Office initiated a preservation analysis of unique and important environmental areas for the entire coast. As a result of this analysis, 32 conservation zones were identified as candidates for preservation. Two of these areas, Merrymeeting Bay and Petit Manan, have been selected for pilot programs by the Department of Conservation. This study has also been used to underpin the initial designations and ultimate protection of areas through the Critical Areas Registry Board.

TABLE IV

Guidelines on Priority of Uses in Areas of Particular Concern

Area Type	Guidelines on Priority of Uses	Areas of Historic or Prehistoric Significance, cont'd	<p>and other facilities and structures. Areas of prehistoric significance are largely existing and potential sites for archaeological digs. High priority uses for these areas are those which maintain the areas in a condition suitable for such digs. These involve largely open space uses such as low intensity recreation, educational, research, and forest management. Low priority uses involve disturbance of the site as the result of construction or other activities. Such uses include construction of buildings, roads, bridges, or other structures; high intensity recreation; agriculture; and others similar.</p> <p>High priority uses for these areas are those which do not conflict with scenic values and access to them. In some cases, only open space uses such as timber production, agriculture, wildlife production, low intensity outdoor recreation, and others similar are high priority. In other cases, generally where there is existing development, properly designed structures for residential, commercial, or industrial uses would also have high priority. Low priority uses are those which would detract from scenic qualities or prevent access to them. Such uses include obtrusive or improperly located structures for any purposes.</p>
Floodplains	<p>Floodplain areas should be used primarily for activities such as agriculture, timber production, and outdoor recreation. In general, they should not be used for activities which would impede the flow of flood waters, reduce the capacity of flood channels to accommodate flood waters, result in hazards to human health or safety, or invite substantial property losses in the event of a flood. Such activities include improper construction and location of bridges, wharves, breakwaters, buildings, and other structures; and use of these areas for residential purposes or the storage of hazardous materials. Exceptions to the general rule are in order where there is substantial existing development.</p>	Significant Scenic Viewpoints and Foreground Components of the Views	
Other Hazard Areas	<p>Due to their variable nature, these area's priorities must be assigned to these areas on a case by case basis. In general, open space uses are considered to have higher priority than development uses which in most cases would be expected to be in conflict with concerns for protecting human health and safety.</p>		
Areas of Scientific Significance	<p>Areas of scientific significance are also widely variable. In general however, uses with the highest priority are open space uses involving research, education, and limited recreation. Depending upon the specific nature of the area, uses involving more active management such as timber harvesting or intensive recreation may or may not be desirable. Development uses are generally of low priority because they would conflict with the scientific values these areas possess.</p>	Significant Scenic or Aesthetic Areas of Sites	
Areas of Interest or Prehistoric Significance	<p>Historic areas within this category involve to a large extent historic buildings. Highest priority uses for these areas are those which involve the maintenance of these buildings. These uses are residential uses largely, but also include educational and limited commercial uses as well. Low priority uses include those which would involve substantial modification or demolition of the structures of interest. Such uses include construction of new buildings, bridges, highways,</p>	Shoreland Areas	<p>In general, high priority uses in these areas are those which do not contribute to the degradation of visual or water quality and do not preclude access to the shoreline. These include properly located, designed, and constructed recreational, residential, commercial, and industrial uses as well as a variety of open space uses such as timber production, wildlife production, low intensity recreation, and agriculture. Within this</p>

TABLE IV (continued)

Shoreland Areas, cont'd	broad array of activities which require access to the shoreline and those which substantially benefit from it are highest priority. The basic concern in this area is not so much with what activities are conducted as how they are conducted. Low priority uses include improperly located, designed, and constructed buildings, roads, bridges, and other structures for any purposes as well as refuse disposal uses which discharge excessive quantities of pollutants to surface waters.	Aquaculture Sites, cont'd	aquaculture by precluding access or polluting the water.
Areas Within 250 feet of Highways	As in the previous case, the concern in roadside areas is not so much with the type of activities which take place as how they are conducted. High priority uses are those which do not result in visual degradation or unsafe traffic conditions. These involve property located, designed, and constructed buildings, roads, bridges, and other structures used for residential, commercial, and industrial uses as well as open space uses similar to those mentioned in relation to shoreland areas. Low priority uses are those which degrade visual quality or result in unsafe traffic conditions. Such uses include obtrusive buildings, refuse disposal areas, and other similar uses; as well as uses which result in an excessive number of unsafe points of ingress and egress.	Significant Agricultural Sites	High priority uses are agricultural uses. Low priority uses are those which involve development for residential, commercial, and industrial uses.
Areas With Valuable Mineral Resources	High priority uses in these areas are those which do not interfere with the commercial extraction of the mineral resources of concern. Where such resources would have to be open pit mined, these include most residential, commercial, and industrial uses which involve structural development; thus, for these areas, open space uses such as agriculture, forestry, wildlife production, and outdoor recreation have the highest priority. Low priority uses for these areas are those which involve construction of buildings or other structures. Areas for which the method of mineral extraction either is not known or is other than open pit are not subject to these priorities.	Wetlands	High priority uses are wildlife management, forestry, low intensity recreation and others similar. Low priority uses are those which involve filling or altering the water table such as development for residential, commercial, and industrial uses.
Aquaculture Sites	High priority uses are those which would not preclude use of these areas for aquaculture. Such uses include use of surface water areas for recreation or commercial fishing and adjacent land areas for open space uses such as agriculture, forestry, wildlife management, or low intensity recreation; as well as non-polluting residential, commercial, and industrial uses not precluding access to the aquaculture site. Low priority uses are those which would make the site unfit for	Beach and Dune Systems	High priority uses are open space uses such as wildlife management, and low intensity recreation. Low priority uses are high intensity recreation, also development for residential, commercial and industrial purposes.
		Shorelands Especially Vulnerable to Erosion or Slumping	High priority uses are open space uses such as wildlife management and low priority uses are development for residential, commercial or industrial purposes.
		Other Ecologically Sensitive Areas	Due to their variable nature, priorities must be assigned to these areas on a case by case basis. In general, open space uses are considered to have higher priority than development uses.
		Significant Beaches	High priority uses are low and high intensity outdoor recreation. Low priority uses are development for commercial, industrial, or residential purposes.
		Heavily Used Footpaths	High priority uses are open space uses such as forestry, agriculture, wildlife management, and outdoor recreation. Low priority uses are those which would block footpaths. Such uses include development for commercial, residential, and industrial purposes.
		Other Areas Which Offer Significant Recreational Opportunities	Due to their variable nature, use priorities must be assigned to these areas on a case by case basis. In general, open space uses have higher priority than development activities.

### Uses of Regional Benefit

Uses of regional impact are controlled under the Site Location of Development Act which requires a state permit for developments above a specific size (highways are excluded). Because the consent of local municipalities is not required for state approval or rejection of a development application local governments cannot unreasonably or capriciously restrict or exclude uses of regional benefit. In practice, however, no developments have as yet been permitted without approval of municipal legislative bodies.

### Organization

As was shown earlier, Maine's management system is based on a shared inter-governmental structure tied together by law, executive orders, coordinating committees, and regional planning commissions. Although the system is complex, the basic "glue" is provided by the state in the following manner.

The State Planning Office, created in 1968, is directly responsible to the Governor. Its statutory responsibilities include giving planning advice and assistance to the Governor, Legislature, state agencies, and local and regional planning bodies; participating in interstate planning efforts (New England Regional Council, River Basins Commission); acting as state agent for Federal planning funds and the A-95 notification and review program; and coordinating state policies and a comprehensive state plan. The SPO will retain budgetary control over the participants in the implementation of the CZM program and will provide staff services to the Cabinet Committee and the Commission on Maine's Future. In particular, the Office maintains overall policy guidance and budgetary authority over the regional planning commissions, which will provide technical and legal assistance to local governments and citizens during implementation of the program.

The SPO is responsible for keeping the State Register of Critical Areas (sites of "unusual natural, scenic, scientific or historical significance" and of "overriding state interest.")

The second major state agency concerned with CZM is the Department of Environmental Protection, which has developed close formal and informal ties with the SPO. It is the key state agency for environmental regulations involving comprehensive programs for air, water, and land quality control.

The third major state agency is the Department of Conservation, whose mission is "to preserve, protect, and enhance the land resources of the state . . . and to insure that coordinated planning for the future allocation of lands for recreational, forest production, mining, and other public and private uses is effectively accomplished; and to provide for the effective management of public lands in the state. . ."

### Coordination

Coordination at the state level is to be effected through the Governor's Committee on Land Use, supported by the SPO. The SPO will provide overall guidance to regional planning commissions which in turn will provide services to local governments to assist them in meeting their responsibilities under state law and to enhance their ability to meet local needs. Local governments, in turn are represented on the RPC's governing boards, and hence will determine priorities for RPC assistance. Each RPC also has a citizen's advisory group which will work to develop regional goals and objectives and a regional land use plan. Implementation of the program will decentralize, to the regional level, DEP regulatory staff to improve the delivery of CZM activities.

Coordination with other New England states and with Federal agencies will be primarily through the New England River Basins Commission.

### Strengths and Limitations of Maine's CZM Program

The strengths of Maine's CZM program involve four distinct, but closely related, components. First, the body of state planning and environmental laws applicable to the coastal zone is among the most comprehensive in the country (see Appendix 3). Second, the program provides a firm basis in policy, coordinative arrangements and administrative procedures to fully apply its environmental laws and managerial capabilities. Third, with the development and adoption of detailed resource synthesis maps for the mid-coast segment. Maine has an objective and technically sound framework within which the management system can operate.

Finally, the CZM program in Maine has been developed from the outset with extensive involvement by those who will be affected by the program. The program thus reflects a significant degree of consensus and managerial participation. Public and agency involvement in developing CZM management processes insures that regional refinements and local diversity will be carried out within a statewide management framework.

The program's weaknesses are common problems found in states that have adopted a host of environmental laws during the past few years. Centralization of new authorities in state government has not been accompanied with sufficient resources to implement them. New authorities at the state level have also been misunderstood by the public and perceived as "distant" and unresponsive to the affected locality. Also, regulatory controls have preceded the development of a planning process within which regulations are applied. Controls often have been administered in a fragmented manner.

All of these factors have been recognized in the Maine program. In fact, approval of the Maine coastal zone management program will result in providing resources (staff and money) to implement state regulatory authorities, and in strengthening the regional planning commissions, thus closing the gap between state and local governments. Approval will also provide a planning process, based on objective data, to help in assessing planning alternatives and making regulatory decisions in a broader than case-by-case framework.

### III. DESCRIPTION OF THE ENVIRONMENT AFFECTED

Maine is located at the northeast end of the North Atlantic megalopolis, with over 45 million people, and southeast of the Saint Lawrence urban region, with over 6 million people. The largest New England state, the 3,478 mile Maine coastline is longer than that of all other New England states combined. The Maine coast is also the most rugged and richest in physical and natural resources. Yet while blessed with valuable resources and environmental assets, the Maine coast is also disadvantaged economically.

#### A. Physical/Natural Characteristics

##### Physiographic Characteristics

Maine has a rugged and irregular coastline, roughly 3,500 miles in length. The shoreline of the Maine coast is of recent submergence characterized by a general lack of wave-cut cliffs and sand beaches which typify more mature shorelines. A lowland borders the coastline, varying from 20 miles wide along the southwestern end to 70 miles along the northeastern section. This heavily indented lowland contains numerous bays and inlets. Offshore are scattered more than 3,000 coastal islands with an aggregate acreage of more than 225,000 acres. Six major rivers - the Piscataquis, Saco, Androscoggin, Kennebec, Penobscot, Machias, and the St. Croix -- and many lakes and streams drain into the coastal zone, providing an abundance of fresh water of varying quality.

Physiographically the coastal zone can best be described by dividing it into three major segments -- the southwestern segment which extends from the New Hampshire border to Casco Bay, the mid-coast segment extending from Casco Bay to Frenchman's Bay, and the northeastern segment ("Downeast") extending from Frenchman's Bay to the New Brunswick border.

The southwestern coast is characterized by a somewhat mature, uncomplicated shoreline with few inlets and bays. The bedrock geology is one of very old (Paleozoic) altered volcanic and sedimentary rock belts paralleling the shore. The surficial overburden is one of glacial sands and marine clays with outwash deposits in the upper valleys. The topography of this segment is one of undulating hills with an average elevation of 100 feet above sea level. Mount Agamenticus (692 feet) is the highest elevation. The Piscataquis and Saco are the major rivers draining into this segment of coastline.

The mid-coast segment is characterized by a dissected shoreline with long narrow bays, rocky shores, and numerous off-shore islands. The bedrock geology consists of altered sedimentary and metamorphic compositions of alternating weak and resistant structures in folded belts which intersect the coast at an angle. The surficial geology in this segment consists of glacial tills predominantly, with outwash gravel deposits, kame terraces and eskers inland. The topography is the most varied of the entire coast, with several mountains of more than 1,000 feet elevation rising dramatically as monadnocks above the gentler coastal lowlands. The principal higher elevations include the Camden Hills, the Blue Hills, and Cadillac Mountain (1,530 feet) on Mt. Desert Island,

which is the highest point on the Atlantic Coast north of Brazil. The major river basins which drain into the mid-coast include the Androscoggin, Kennebec and Penobscot Rivers. The major bays occurring in this section are Casco Bay, Merrymeeting Bay, Sheepscot Bay, Booth Bay, Muscongus Bay, Penobscot Bay (the largest single embayment on the Maine coast), Isle Au Haut Bay, Jericho Bay, Blue Hill Bay, and Frenchman's Bay. Somes Sound on Mt. Desert Island is noteworthy as the only true fjord on the Atlantic Coast. The largest offshore islands also occur in this region, including Islesboro, North Haven, Isle Au Haut, Deer Isle, Swans Island, and Mt. Desert Island (the largest island on the coast and location of Acadia National Park).

The northeastern segment is characterized by an extremely irregular complex of bays and islands with high coastal bluffs and headlands. The bedrock geology consists of associations of igneous rocks, which have been deeply eroded by streams and glacial ice, and associations of less altered and less tightly folded sedimentary and volcanic rocks. The surficial geology consists of glacial till, outwash and marine sediments with large deltas and outwash plains occurring inland. The topography is that of a gentler undulating coastal plain with an average elevation of 100 feet above sea level, similar to the southwestern coastal segment. The Machias and St. Croix basins drain into this segment of the coast. The principal bays include Gouldsboro Bay, Dyer Bay, Narraguagus Bay, Pleasant Bay, Chandler Bay, Machias Bay, Cobscook Bay, and Passamaquoddy Bay. West Quoddy Head at the entrance to Passamaquoddy Bay is noteworthy as the eastern-most point in the United States.

### Climate

In general terms, Maine's coastal climate is characterized by fog, land, and sea breezes, and temperatures less extreme than inland temperatures. Temperatures along the coast are quite moderate with mean temperatures ranging from 60° to 68° in July, and from 22° to 20° in January. The average frost-free season lasts from the end of April until October, and the growing season in the coastal region is generally 140 to 160 days, as opposed to 120 to 140 days inland.

Precipitation is distributed fairly evenly throughout the year, with a slight excess in winter due to winter storms (northeasters). Total yearly precipitation averages 46" in the coastal region, as opposed to 40" inland. Snow is less abundant on the coast than it is inland. Annual snowfall averages 50" to 70" in the coastal region, as opposed to 90" to 100" inland. Extended periods of dry weather and droughts are uncommon in the coastal zone.

Fog is common in the summer -- one day out of six -- because of the prevailing warm southern air passing over the colder surface water of the Gulf of Maine. Due to both cloudiness and fog, sunshine on the coast varies between 50% and 60% of total possible sunshine during the day. Occasionally there are severe storms (hurricanes and northeasters) which cause considerable damage to fishing gear and shorefront property.

The mean annual ocean water temperature has been 48°F for the past two years, and is expected to decrease over the next decade.



### Flora and Fauna

Maine's forests have been classified as part of the White Pine - Hemlock - Northern Hardwood forest. However, there is considerable variation in actual species composition throughout the coastal region.

In the southwestern segment, the favorable, well-drained sites are characterized by extensive stands of mixed northern hardwoods (Birch, Beech, Oak, Maple, Ash, Aspen) and coniferous species (Spruce, Hemlock, Pine, Fir, Cedar).

In the mid-coast segment an increase in the occurrence of boreal species is noticeable, especially where there is a strong maritime influence. Well-drained upland sites continue to support the Pine - Hemlock - hardwood association, but along the immediate coast, dense Spruce - Fir stands predominate.

In the northeastern segment, the coastal Spruce - Fir association is predominant inland as well as along the coast, although typical hardwood species are abundantly interspersed in some areas.

The significant commercial shellfish found along the coast of Maine include lobsters, shrimp, hard- and soft-shell clams, and scallops. Commercial fin fishes include herring, ocean perch, cusk, cod, haddock, hake, pollock, mackerel, halibut, whiting, and flounder. The sport fishery consists mostly of tuna, mackerel, flounder, several deep-sea species including sharks, and the anadromous fish in estuaries.

The anadromous fishery, important during spawning runs, includes alewives, shad and smelts. Two rare anadromous species found along the Maine coast are the Atlantic salmon and sturgeon. Both species were previously far more abundant, and have been seriously affected by man's activities. They are increasing again as water quality is restored and river dams are removed.

Cold water fish found in the deeper fresh water lakes throughout the coastal zone include several species of trout and the land-locked salmon. Warm water species such as the large and small-mouthed bass, perch and chain pickerel are found in most lakes and ponds.

The animals of the coastal zone are typical of the eastern forests. White tail deer are the most important mammal in terms of human utilization. However, raccoons, squirrels, red foxes, porcupines, woodchucks, weasels, minks, and snowshoe hares inhabit forested and partially forested areas which are not heavily developed. Beaver and muskrats are found in the upper estuaries, swamps and marshes in the coastal zone and are trapped commercially by many coastal residents.

Large carnivores such as bobcats and bears and boreal species such as moose, Canada lynx and marten were common in the past, but are now rarely seen in the coastal zone because of alteration of habitat and predation by man.

Whales, porpoises, dolphins and seals frequent the coastal waters. Occasionally the gray seal, as well as the more common harbor seal, are seen on the smaller coastal islands and in adjacent waters.

Birds in the coastal zone forests are mostly passerines, or perching birds. Although most species are typical of the eastern forests, many boreal species can inhabit Spruce - Fir areas. The coastal islands and peninsulas are also important stopping places for migrating passerines.

Lowland areas, marshes and swamps provide important habitat for resident waterfowl and birds. Herons and bitterns are found regularly in wet situations but breed only in a few isolated colonies. Black ducks and wood ducks breed in many swamps and small marshes in the coastal zone.

Gulls and terns are the most conspicuous birds along the coast where they nest in colonies on the numerous barren islands. Guillemots are found in significant numbers and breed in Maine. Eider ducks are the only sea ducks which breed along the Maine coast, although several species of sea ducks can be found in the winter.

Small colonies of oceanic birds are located on several offshore islands. These include the Atlantic puffin (on Machias Seal Island and Matinicus Rock), razorbills and petrels. Each year thousands of shore birds and water fowl migrate through Maine, stopping to feed and rest on the beaches, mudflats, lakes and river shores.

American Bald Eagles and ospreys are found along the coast and their nests can be observed on the high ground along the more underdeveloped areas of the major estuaries.

## B. Social/Economic Characteristics

### Population and housing

In 1970, approximately 47% (464,883 persons) of Maine's permanent population of 993,663 resided in coastal counties, on slightly more than 21% of Maine's total area. Although comparatively low nationally, the population density of 149 persons per square mile in the Maine coastal zone is about four times higher than the statewide average. About 53% of this coastal population lives in rural communities of less than 2,500 inhabitants. The coastal zone contains 32% of the incorporated towns in the state.

Recent census estimates show that the population in coastal counties increased by 4.7% during the years 1960 - 1970 and a surprising 5.5% in the years 1970 - 1973. This new growth in part represents a major change in coastal migration patterns which showed only a small in-migration during the 1940's, a strong out-migration during the 1950's and 1960's, but a 4.3% increase during the years 1970 - 1973.

Coastal population and population growth is very unevenly distributed. Two-thirds of the present coastal population is concentrated in towns in the two southwestern counties. While the average coastal population increase was only 4.7% in the last decade, 15 coastal towns gained more than 25%, and 45 (including most of the large industrial cities) lost population. Coastal counties receiving the most new inhabitants were Waldo, Knox, in the mid-coast region, and Washington county in the north.

There are approximately 238,000 housing units in Maine's coastal counties. Over 15% of these units are seasonal homes. The total number of coastal housing units represents slightly over 50% of the state's total year-round units and more than 60% of the state's total seasonal homes.

#### Land Ownership

It is estimated that 60% of the coastal zone is in private-Maine resident ownership, 5% is in public ownership, and 35% is owned by non-residents. The greatest non-resident ownership occurs in the mid-coast region with the greatest resident ownership occurring in the southwestern segment.

Presently the combined Federal, state and municipal holdings encompass approximately 122 miles of coastal shorefront. Private conservation groups hold an additional 40 miles. A total of 162 miles of coastal shoreline are thus in public control. These shoreline holdings represent 157 square miles of publicly-owned land, or approximately 5% of the coastal zone's (as distinct from the coastal county's) 3,451 square mile area.

The significant Federal holdings in Maine's coastal zone include Acadia National Park (33,136 acres), Moosehorn Wildlife Refuge (22,660 acres), and the Rachel Carson Wildlife Refuge (1,300 acres).

Maine's State Comprehensive Outdoor Recreation Plan estimates that 3 times the existing public lands now available in Maine will be needed to satisfy recreational demand by 1990.

#### Property Valuation and Assessment

Real property in the coastal zone showed an estimated 63% increase from 1960 to 1970, slightly more than the statewide increase of 48% for the same period. Local property assessments increased 116%, both statewide and in coastal towns during the decade 1960 to 1970. The 1970 local property assessment in the coastal zone equalled about \$89 million, or 41% of the state total of \$180 million.

The 1970 median market value of year-round homes in the coastal zone was an estimated \$15,000, or slightly higher than the statewide value of \$13,000. The value of seasonal homes is estimated to be 6 times the value of year-round homes in the coastal zone.

### Wages, Income and Employment

In 1973, the average gross wage in coastal counties was \$6,897 as compared to a state average of \$7,050. The value of product was \$1,398 million or 44% of the state product.

The 1970 income distribution of families and unrelated individuals in the coastal zone was: \$0 - \$5,000, 36%, \$5,000 - \$10,000, 35%; and \$10,000 plus, 29%. The state breakdown was as follows: \$0 - \$5,000, 27%; \$5,000 - \$10,000, 42%; and \$10,000 plus, 31%.

The coastal zone has a work force in excess of 213,230 persons or 48.3% of the state's total. Labor figures for 1973 show that the coastal unemployment (6.3%) ran slightly higher than the state average (5.9%) and 31% higher than the national average (4.8%).

### Industry

In Maine, the use of electricity has risen 6.6% annually and its use is projected to increase 3 1/2 times during the next 20 years. At present in the state, there are numerous small, low-output hydroelectric plants, one fossil-fuel plant on Casco Bay, and one nuclear-power facility at Wiscasset. An additional nuclear-power plant is proposed on Penobscot Bay and the feasibility of a tidal-power facility in Passamaquoddy Bay is again being strongly considered.

It has been estimated that 70% of New England's electrical power will be produced by nuclear-power plants by 1990. The Maine coast is particularly desirable to the atomic power industry because of its abundant undeveloped land and its virtually unlimited supplies of cold water for cooling. In view of these factors and the rapidly increasing demands for energy in New England, it is likely that the demand for additional large scale nuclear-power generating plants will increase along the Maine coast.

Maine will also probably play a central role in petroleum resources in New England. Oil is the major source of energy in New England and the eastern United States. Oil importation already exists on the Maine coast at Portland (the second largest oil port on the East coast), with its pipeline to Montreal, Canada, and at Searsport with its pipeline to Bangor and on to Presque Isle. Extensive geophysical exploration for petroleum resources in the waters of the Gulf of Maine indicates the likelihood of substantial offshore oil and gas. If large amounts of oil and gas were found off the Maine coast, heavy demands could be placed on the coastal zone for lands for storage tanks, loading facilities, supplies and material, and for refining operations and associated petro-chemical industries.

Because Maine offers the deepest, the best and the most (13 out of 23) deep-water harbors on the East Coast, there has been significant out of state interest during the past five years in developing deepwater oil ports at Machiasport, Sears Island in Penobscot Bay, Long Island in Casco Bay, and at Eastport in Passamaquoddy Bay. For these reasons, oil importation and refining will exert significant pressure in the future on Maine's coast.

The tourist and recreation related industries play an increasing role in the state's economy. Twenty-five years of post-war prosperity have initiated a quantum leap in recreation demand upon the coastal resources. The primary factors contributing to this rapid surge in demand are: increased population, a greater affluence, increased leisure time and a greater mobility. In spite of the current economic situation, which may slow down the rate of increase, recreation demands are expected to continue to increase. Seventy million people live within a day's driving time of Maine. Vacationers at the rate of 5.5 million persons per year come to the State of Maine. Projections indicate that these numbers are increasing at a rate of 8 - 10% per year. Of these numbers, it is estimated that 2/3 are entering Maine bound for the south-western and mid-coast segments of the coastal zone.

The 5.5 million tourists who visit Maine spend about 10.8 million visitor-days annually along Maine's coast. About 6 million visitor-days are as seasonal (summer) residents; 2.4 million are in Maine's hotels and motels; .3 million are campers in public camping facilities, and 2.1 million are campers in private facilities. An additional 1.5 persons come to Maine as day visitors. Popular summering places and tourist meccas include Bar Harbor, (Acadia National Park), Penobscot Bay area, Boothbay Harbor, and Old Orchard Beach.

About 77% of the states recreation generated employment occurs in the coastal zone. The greatest economic impact is generated by the 6 million visitor-days spent as seasonal residents. The annual expenditure per seasonal household is estimated at \$1,873 per year, or \$44 million annually statewide.

Fishing is Maine's oldest and most traditional industry and is so interwoven with the character of the coast as to be inseparable from it. The fishing industry employs 14 - 15,000 people as licensed fisherman, dealers and buyers and an additional 2 - 3,000 persons in processing plants for a total of 16 - 18,000 employed. The total indirect impact contributed by the fishing industry to the state's economy is \$173 million annually.

The six species of highest value per pound are: sea scallops, oysters, lobsters, clams, quahogs (hard clams), and shrimp. Maine's coastal waters yield 20 - 30% of the world and 80 - 90% of the national catch of true lobsters, which is by far the most valuable state fisheries product. The value of shrimp and worms has also grown substantially over the past decade.

Overall, the landed value of Maine fish has increased steadily (+58%) since 1950 while the number of pounds landed has decreased (-58%) substantially.

Maine's fisheries are threatened from many quarters including rising land values, rising cost of living, the overfishing of certain species, estuarine pollution, and the fluctuation of ocean temperatures, as well as the heavily subsidized foreign fishing fleets.

There has been a great deal of discussion concerning the potential significance of aquaculture as it relates to Maine's coastal zone. This interest has been generated partially as a result of successful projects elsewhere in this country and other parts of the world and partially as a result of a need for viable new industry for Maine.

Maine aquaculture is still very much in its infancy. Considerable research and development has been initiated with every indication pointing toward an increased role in the future development of Maine's coastal resources. Aquaculture activities currently underway on the Maine coast include: raft culture of oysters and blue mussels, lobster and trout culture, and several aquaculture-related environmental, biological and marketing studies.

Farmland occupies a considerable amount of the remaining open space in Maine's coastal zone. Like fishing, it is one of the traditional occupations which has aesthetic value and appeal to urban visitors.

Farming has suffered, as it has nationally, a severe decline during the past 20 years. Tax pressures, rising land values and the "revolution of rising expectations" have contributed substantially to the decline in the number of farmers. As the total number of farms has declined, the average size of each farm has increased. The total amount of farmland has also decreased substantially (-9%) during the last 30 years.

There is more land in cultivation in the central and southern sections of the coast while individual farms in the eastern section are larger with less total land being cultivated. Total farm cash income statewide is estimated at slightly more than \$200 million. The principal sources of this income in the coastal zone are poultry products, dairy products and blue-berries. Total farm employment statewide is estimated at approximately 15,000 persons.

Rising property values and taxes (up 9% in the last decade) have been forcing much of Maine's farmland into subdivision, but this situation is being alleviated by a "farm and open space" tax program, adopted in 1972, which assesses farmland at its current use value rather than at its potential use value. During the first year of operation, this program reassessed over 10,000 acres of farmland.

Traditionally, Maine's coastal mineral development has consisted of quarrying for building rock for export out of state, limestone for transformation into cement and fertilizer, and sand and gravel. Copper, lead, zinc, gold, silver, molybdenite, mica, serpentine and grinding pebbles have also been produced in the past in the Maine coastal zone. Although the Maine coastal area has led the other regions of Maine in value and tonnage of current mineral output in the past, output of many commodities has declined.

There are currently active large open-pit mines for blue rock in Portland, for limestone in Thomaston, active ore extraction for copper and zinc in Blue Hill, and silver at Camp Rosier on Penobscot Bay. Quarrying, which was particularly active on coastal islands, is now fairly dormant. Sand and gravel account for \$6 million of the \$17 million mineral industry.

Although there exists the possibility of further mineral finds in the belt of volcano rock which extends north from Penobscot Bay to Eastport and in the base metal sulfide deposits along the coast from Penobscot Bay south to the New Hampshire border, as the result of current geological investigations extensive mining does not seem probable in the near future.

National and regional demands upon Maine for manufacturing and conversion of her resources are low. Pulp and paper production is by far the most valuable industry followed by food, leather and textiles.

Manufacturing plants in Maine are typically small and labor intensive with much of their capital equipment obsolete. Manufacturing is largely concentrated in the five-county area of York, Cumberland, Androscoggin, Sagadahoc and Kennebec counties. Four of these counties are largely in the coastal zone.

Statewide, manufacturing employment comprises 32% of the total employment. The value of Maine's manufactured product rose steadily during the decade 1961-1971 from \$1,491.7 million in 1961 to \$2,432.4 million in 1971.

### Summary

The Maine coast lies on the fringe of the northeastern megalopolis which includes over 45 million people (one fifth of the nation's population). It is an area of high environmental values but is disadvantaged economically.

Regional and national demands on the Maine coastal zone are increasing and will continue to intensify, placing severe pressures on the unique natural systems and values of the coast.

Specific major conflicts which are emerging and are forecast to increase include environmental quality, recreation, tourism, second home development, nuclear power plant siting, deep water port development, refinery sitings offshore oil production, commercial fishing and fish processing, and mineral extraction. The pivotal issue which must be resolved is the determination of appropriate economic development which can be accommodated in the coastal zone and still maintain the viability and value of the natural systems of the area.

As these pressures mount, conflicts will occur over the uses of the coastal zone. A key question which confronts all levels of government and private industry is "What are the appropriate uses of the Maine coastal zone which serve the public interest, whether that be local, regional, or national?"

A sound decision-making process must evolve in order to assure appropriate uses of the coastal zone. This decision-making process must provide for recognition of the unique natural value and benefits of the coast while simultaneously considering the economic development requirements of an increasingly affluent Maine or New England population. A viable legal and institutional framework is an essential component of a coastal zone management system. The coastal zone planning effort currently ongoing under the leadership of the State of Maine is a firm foundation for the development of a solid coastal zone management system which is responsive to both environmental and economic needs of the society and which provides a basis for a responsible legal and institutional framework.



#### IV. RELATIONSHIP OF THE PROPOSED ACTION TO LAND USE PLANS, POLICIES AND CONTROLS FOR THE AREA

In the introduction to the Coastal Zone Management Act, the Congress found that "present state and local institutional arrangements for planning and regulating land and water uses . . . are inadequate," and that "the key to more effective protection and use of the land and water resources of the coastal zone is for the states to . . . develop land and water use programs for the coastal zone, including unified policies, criteria, standards, methods and processes for dealing with land and water use decisions of more than local significance." (Section 302(g) and (h)). The Maine coastal zone management program substantially recognizes these objectives, and is designed to provide a more unified approach toward managing the coastal resources by coordinating intergovernmental agency actions into a comprehensive program to achieve common, explicit objectives. Since the Maine CZM program will interact with existing land-use plans, policies and controls, the SPO has maintained close contact with affected Federal and state agencies and local governments throughout the development of the state guidelines, procedures and programs.

Until recently most of Maine's coastline had never been zoned. In 1971 Maine passed the Mandatory Shoreland Zoning Act, requiring that municipalities establish zoning and subdivision controls within 250 feet along all navigable lakes, rivers, streams and ocean frontage by July 1, 1973. The Act stipulated that if municipalities did not zone their own shorelands, the state would do it for them. Due to overwhelming non-compliance by municipalities the deadline for enacting local zoning ordinances was extended. With technical assistance and guidelines from the State Planning Office, more local plans have been completed. The state is preparing ordinances for those communities which have not yet enacted ordinances and reviewing existing ordinances to determine their consistency with state guidelines. In addition the resource information collected by the Coastal Zone management program will be used as a guide in developing, reviewing and refining local shoreland zoning ordinances.

Under the Site Location of Development Act, the Board of Environmental Protection has permit authority to control the location of developments substantially affecting local environment. The coastal zone management program's resource inventory will be used by the Board and DEP as a guide, and for assistance in reviewing permit applications in the coastal area.

The coastal zone inventory will be critical to the operation of other environmental legislation as well. Provisions of the Wetlands Protection Act will be utilized to protect critical areas of state importance in the intertidal zone. The State Register of Critical Areas Act will be utilized to propose areas for protection through the Wetlands Control Act.

Approval of the state coastal zone management program by the Secretary of Commerce will have implications on other Federal agency policies and controls. Section 307(c) of the Act provides that: (1) Federal agencies conducting or supporting activities or undertaking development in the coastal zone of

a state shall insure that the activities or projects are to the maximum extent consistent with the approved state management program, and (2) except in the interest of national security, Federal agencies shall not issue licenses or permits for any activity affecting land or water uses in the coastal zone unless the state issues a certification that the activity complies with the approved program.

## V. PROBABLE IMPACT OF THE PROPOSED ACTION ON THE ENVIRONMENT

As indicated in the description of the Federal coastal zone management program (Section II), it is clearly the intention of the CZM Act to produce a net environmental gain or benefit in the Nation's coasts. The Act encourages states to achieve this goal through better coordination, explicit recognition of long-term objectives and the development of a more rational decision-making process in context with the overall policy guidance. It might be expected that this process, which could affect much of the activity along the coasts, would have a substantial environmental impact. However, as there has been no previous experience with such management programs, their impact is difficult to assess. Unlike a specific project or activity, there is no real experience upon which an analysis of the environmental impact can be assessed.

Undoubtedly both beneficial and adverse environmental and socio-economic effects will derive from Federal approval and state implementation of the Maine coastal zone management program. The following appear most significant.

### A. Impacts directly resulting from Federal approval

Impacts associated with the Federal approval of the Maine coastal zone management program fall into two categories: (1) impacts due to a direct transfer of funds to the state and local governments, and (2) impacts from the implementation of the Coastal Zone Management Act.

Federal approval will permit the Office of Coastal Zone Management to award program administrative grants (Section 306) to Maine. This will increase the level of employment of planning, technical and legal specialists and enforcement officials at the state, regional, and local government levels. In some cases it will provide a professional basis for resource management which has not previously existed. As pointed out earlier, one of the weaknesses of the Maine program to date has been a lack of funding and inadequate staffing to administer and enforce the various program requirements. Federal 306 grants will be used to coordinate, administer, and enforce existing state authorities. Additionally, the bulk of funding will be passed through to regional planning commissions to strengthen their planning and review capabilities. Staff persons will be employed at the regional level to offer technical and legal assistance. Increased funding should speed up the development of the regional plans and provide the resources for continual improvement of those programs. Funds will be used to conduct further research and other studies related to the human and natural environments which will increase the quality of the base from which coastal zone management decisions will be made.

Federal approval and state implementation of the state's coastal zone management program will also have implications for Federal agency actions and on the national interest in the siting of facilities of more than local concern. As explained earlier, the Federal consistency requirements of the Act (Section 307(c) and (d) require that direct Federal activities or development projects must be consistent to the maximum extent practicable

with approved state programs. Federal agencies issuing licenses or permits for any activity affecting the coastal zone are generally constrained from doing so until the state certifies that the proposed activity is in fact consistent with its management program. In addition, Federal agencies are in most cases restricted from approving proposed projects affecting the coastal zone which require Federal assistance unless they are consistent with the coastal management program. Under this program approval Federal consistency requirements will apply only to the mid-coast segment of Maine.

Although states have previously had the opportunity to comment upon Federal actions, licenses or permits, in the past this comment has not generally been required or mandatory. This new responsibility will provide for more coordinated and comprehensive management of coastal resources and uses, and has the potential for reducing the fragmented, single-purpose and frequently conflicting nature of activities affecting the coastal zone.

The Federal Coastal Zone Management Act does require that state governments issue or deny a certification of consistency within six months from the time of application, or consistency will be presumed. The state of Maine has set up a Federal-State Coordinator's Office in the Executive Office to determine consistency. In addition it has formed a committee within the New England River Basin Commission to look at consistency issues on a continuing basis. In cases where projects are judged inconsistent with the management program and the state has objected or denied certification, Federal agencies will have to deny permit applications unless the appeal procedures established by the OCZM determine otherwise. The impacts associated with a Secretarial override, should it be exercised, could be significant, but would depend on an evaluation of each specific case and are not likely to be involved unless extraordinary conditions, such as national security, are involved.

The overall thrust of Federal consistency will be to provide closer cooperation and coordination between Federal, state and local government agencies involved in coastal zone related activities and management. This is considered to be a desirable impact and indeed, is one of the objectives of the Act as discussed earlier.

Federal approval of a state's program would also signify that the state has an acceptable procedure and administrative mechanism to insure the adequate consideration of the national interest involved in the siting of facilities necessary to meet requirements which are other than local in nature. Such facilities might include energy production and transmission; recreation; inter-state transportation; production of food and fiber; preservation of life and property; national defense and aerospace; historic, cultural, esthetic and conservation values; and mineral resources, to the extent they are dependent on or relate to the coastal zone.

The state has indicated that energy related questions will assume the lion's share of Federal interest and National concern in Maine. The State Site Location of Development Act and the procedures Maine has developed for inventorying coastal resources and identifying their existing or potential utilization will be helpful in the evaluation of sites for facilities which are in the national interest.

This policy requirement is intended to assure that national concerns over facility siting are considered and dealt with in the development and implementation of state coastal zone management programs. The requirement should not be construed as compelling the states to propose a program which accommodates certain types of facilities, but to assure that such national concerns are included at an early stage in the state's planning activities and that such facilities not be arbitrarily excluded or unreasonably restricted in the management program without good and sufficient reason.

This provision might have two impacts. First, it will prohibit a state from arbitrarily or categorically prohibiting or excluding any use or activity dependent on the coastal zone. Whereas in the lack of a comprehensive planning program such consideration might simply be ignored by oversight or default, this requirement will insure they are specifically included. On the other hand, the existence and approval of an explicit procedure will protect the state from the capricious imposition of actions or projects by Federal agencies in the name of the national interest. In either event, the procedure should lead to the more deliberate and thoughtful, and less fragmented and wasteful, siting of such facilities in Maine and ultimately the Nation as a whole.

#### B. Impacts Resulting from the State and Regional Government Actions

Although the Maine Coastal Zone Management program was begun prior to the passage of the Federal CZM Act, and would continue, at least in part, even if Federal funds or approval were withheld, approval by the Secretary will solidify the existing State effort to improve Maine's land and water use planning and management capability, making it more complete, timely and effective. Again, since the proposed action does not designate actual physical development or specific activity in the coastal zone, an assessment of specific impacts is difficult.

The Maine Coastal Zone program provides the necessary first step toward achieving an interrelated set of land and water use policies, regulations and ordinances aimed to plan for and control future growth and development. It will complement Maine's environmental legislation by performing the necessary planning and coordinating functions which the regulatory legislation is not designed to handle. It will instill a planning and policy development effort into what is now primarily a case-by-case review of individual projects. Thus it will strengthen planning as an active tool in making land use decisions.

In general the effects of the State's coastal zone management program can be summarized as follows:

- (1) the recognition and protection of the coastal zone and its esthetic, cultural, biological and natural components, as a fragile, limited, and valuable resource;
- (2) the protection of public rights, such as public health and safety; public access and navigation; recreation; and public property, dependent on or related to the coastal zone;

- (3) the promotion of appropriate quality development in suitable locations, and the restriction, reduction or prohibition of incompatible, undesirable, or unnecessary coastal uses and activities;
- (4) the promotion and enhancement of long-range public benefits, especially from renewable resources, rather than short term benefits; and
- (5) the promotion of a regional approach to coastal land and water use planning and an increase in coordination and cooperation in planning and management efforts among state, regional and local governments.

Maine's program uses several mechanisms which, working together, will form a land use guidance system. These key elements of Maine's approach include: (1) development of a standardized data base for decision-making, (2) development of a resource classification system for guiding land use decisions, (3) development of regional land use plans and (4) development of an intra and intergovernmental coordination process.

Wise land use management depends on the availability and analysis of detailed current information about the resources and socio-economic conditions of an area. The Maine inventory and analysis of natural resources, cultural and socio-economic information for the coastal zone present much information which has never been gathered for the Maine coast.

The synthesis and analysis of this data provides a rational framework for considering land use issues and for designing strategies to deal with these issues. Approval of the Maine CZM program will provide the mechanism for utilizing this data by providing for stronger regional planning commissions and enabling them to develop land and water use programs based on this analysis. These regional land and water use programs should enable a more rational allocation of coastal resources, that will benefit not only the State, but the Federal government, municipalities, public interest groups and individuals as well.

The designation of coastal areas as critical areas of state concern, or as suitable or unsuitable for certain types of development will have several effects. Until all resource inventories and analyses are completed, it is impossible to assess the ratio of lands in each category. SPO representatives have indicated that perhaps 70% of the coastal zone may ultimately be classified as unsuitable for large scale development, 25% as intermediate suitability, and 5% as suitable. Given the sizeable area and character of Maine's coastal zone, this tentative estimate of suitability does not appear to be unduly restrictive.

Lands designated as critical areas as well as lands designated by the state for preservation or restoration, will be provided increased long-term, if not permanent, protection. These resources, their values and benefits, will be perpetuated, which will be generally beneficial to the environment.

In contrast, lands designated as suitable for development may come under increasing pressure for development; this may mean the ultimate development of such areas with concomitant loss of natural resources. Population, commercial, and industrial densities will likely increase in such areas. However, this cannot be considered a negative or adverse environmental impact attributable to the Maine CZM program as growth and development would occur anyway. Furthermore it must be recognized that not all development or activity in the coastal zone can or should be halted. The Maine program will insure that these determinations are based on sound information and processes which reflect the value of the natural environment. Its process for determining where development should go, as well as where it should not, can be environmentally beneficial, for the designation of specific areas for development will focus and restrict such activities to carefully chosen sites. This will reduce the development pressures on environmentally sensitive or valuable areas, and will also serve to reduce urban sprawl with its variety of induced impacts. It should help reduce conflict between public and private interests by identifying planning constraints and opportunities so that developers can make their development decisions within the context of the appropriate public interest and environmental considerations.

Protection of some natural areas may mean that resources there, such as timber or minerals, could not be fully utilized or exploited. The mineral reserves on the Maine coast have not been classified for preservation, but have been identified as areas of State concern. State permits would be required before any mining could be done. The impact of prohibiting timber harvest in the coastal zone would be insignificant in view of the overall state timber resources. In Maine, coastal timber-cutting is already restricted to some extent.

Because the designation of coastal lands as suitable or unsuitable for development will restrict or reduce the development potential of some properties and enhance the same potential in others, property values and ultimately property tax revenues may be affected. Problems of equity will always be an issue in any attempt to control or change land uses. The CZM program is a strong impetus to the development of effective strategies to deal with the legal and financial problems associated with land use control. Without a great deal of experience it is difficult to assess the magnitude of such an impact. Potentially the result might be a displacement of property values (losses in some areas and gains in others) more than a net loss or gain. The most adversely affected sector will be the land speculators. It is also probable that such changes will be short-term only, and that with insured protection of use and enhanced protection of the coastal amenities the long-term property values in the coast will increase.

Any decrease in property values will decrease the amount of property tax generated revenues received by local governments. This could result in: (1) a decrease in public service to the community, especially in areas lacking some urban environments in which the increase in property value would perhaps affect the tax loss, and (2) increased taxes in some areas.

As indicated earlier, however, because the supply of developable lands would be reduced, their value and taxes would increase. Further, as the coastal aesthetic and resource amenities are protected and preserved adjacent properties will become more desirable for residential and recreational uses. The higher value of these lands would result in a positive effect on the tax base, which may fully compensate for anticipated tax losses. A potential negative impact from increased property values and taxes will occur to the extent that it changes patterns of land ownership by pricing the local population out of the land market.

Rising land prices associated with Maine's tourist and second home recreation boom have made it increasingly difficult for the local population to retain its position in the land market, resulting in increased holdings by out of state interests.

The restriction on land use imposed by classification, and the requirements to reduce negative visual and environmental impacts of development and coastal activities, may increase operating or capital costs for some operations. These will be balanced by public gains from the continued protection or enhancement of the coastal resources. To the extent they occur such losses really reflect the external costs of such operations, which have traditionally been born by the public but which are now, by regulatory authority, being charged to the responsible party.

The impact of restricted uses on the distribution of people in coastal areas may be significant. To the extent that future residential subdivisions and multi-family dwellings are prohibited from specific areas population densities may shift. There may be some impact on employment patterns due to restrictions on the location of, and conditions placed upon, large developments which are significant employers. The distribution of population would change as a result of changes in employment patterns.

The program is intended to protect water dependent uses and coastal resources. This would result in the protection enhancement and long term productivity of commercial and sport fishing industries, and the continuation of other water dependent industries. The program is not intended to displace existing non-water dependent industries, but with time and the arrival of new industries, gradual shifts in industrial patterns may occur.

The decentralized structure of Maine's program, which allows for regional and local diversity within a statewide management framework, will substantially strengthen the regional level of government in Maine.

Regional planning commissions will be the primary recipient of coastal zone management funds at the regional-local level. Increased funding and staff will strengthen the role of the regional planning commissions. They will allow the commissions to prepare and update regional land-use plans, incorporating local goals and objectives, regional priorities and expressed state interests. The regional land use plan will serve as a management device to measure the adequacy and appropriateness of State and local regulatory authority. Regional staff technical teams will provide planning assistance to local officials and assist applicants in the preparation of development applications. The regional planning commission will review local regulatory efforts for consistency with regional and State interests. While the regional planning commission has only review and advisory authorities rather than regulatory power, its involvement in the preparation of regional land use plans and the local review process should make local planning and regulatory decisions more effective by improving the information on which they are based and broadening the perspective from which they are made. In essence it will provide a responsible link between local governments and the State. The State program will also provide for greater coordination of State, local, and Federal actions to achieve explicitly identified goals.

Maine's coastal zone program will be implemented through the existing management structure of laws and institutions. The Governor's Cabinet Committee on Land Use, cooperative agreements between State regulatory agencies, regional planning commissions and technical teams, and active citizens advisory committees are all necessary links in operating an effective land and water use management system.



This interagency and intergovernmental coordination will help overcome the problems arising from the traditional inability to evaluate land and water issues in a framework that transcends disciplines and institutional boundaries. It should facilitate the flow of information, reduce conflict, duplication and counter-productive activities and encourage a unification of policies and activities which work together toward wise coastal zone management.

## VI. ALTERNATIVES TO THE PROPOSED ACTION

### A. Federal Alternatives to Approval of Maine CZM Program

The Secretary could delay Maine CZM program approval until regional land use plans are completed and adopted.

Since detailed regional land use plans have not yet been prepared by the coastal RPC's delay of CZM program approval until their completion might permit a better determination to be made of the ability of the State of Maine and its regional governments to meet the intention of the CZM Act. Performance could be more thoroughly analyzed leading to a better evaluation of how state policies and regulatory activities will be interpreted and managed at the regional and local levels.

However, there is sufficient state policy and authority in place now to satisfy CZM criteria for program approval. The CZM Act and OCZM in administering the Act acknowledge that effective management of a state's coastal zone necessarily is a continuing process, only one step of which is program approval. The State of Maine's environmental legislation, together with other program elements, meets the spirit of the CZM Act. However, to date, there has been a shortage of funds and staff expertise to adequately administer the state's enforcement and regulatory activities. None of the regions are now working on comprehensive regional plans as a shortage of funds and staff have limited their effort to special purpose studies. Continued delay in the preparation of these plans could jeopardize the effective administration of Maine's environmental legislation. The state views the regional plan as a key element in supporting an effective state and local regulatory and enforcement network.

While a 305 grant could be used to assist in developing regional plans, it could not be used to finance the technical and legal assistance needed by state and local government to adequately implement existing regulatory authority.

Furthermore, if approval is not given for the Maine CZM program, then the Federal consistency section (Sec. 307) of the CZM Act cannot be applied within the segment. Specifically, this section requires that any Federal agency which conducts, supports or undertakes an activity in or affecting the coastal zone shall insure that the activity is "to the maximum extent practicable" consistent with an approved state program. The consequence of delayed approval is that inconsistent Federal actions could serve to increase pressures on this particularly sensitive section of the Maine coast.

The Secretary could delay approval of Maine's mid-coast segment coastal zone management program until the other segments of the Maine coast have CZM programs ready for Federal approval.

Delay in approving this segment of Maine's CZM program until the other segments are completed would perhaps provide a more comprehensive basis for review and approval. This is recognized in the CZM Act, but an explicit provision for geographic segmentation is made so that immediate attention may be devoted to those areas most urgently needing management programs (Sec. 306h).

The essential CZM program boundaries, policies, and mechanisms for implementation have been established state-wide. Only the coastal atlas, which is fundamental to program implementation, remains to be completed in these areas.

As discussed earlier, the inventory process above has been conducted comprehensively on a region by region basis, rather than coastwide, factor by factor, to enable a more rapid synthesis and more immediate use. This process has now been completed for the mid-coast region of Maine. The state has a plan and timetable for completing the remaining segments of the Maine CZM program. Completion of the Washington County, Cumberland County and York County segments is scheduled for December 1975. The final two areas of the coastal zone, the Penobscot and Kennebec coastal river areas, are scheduled for completion by June 1976.

In general terms, the southwestern segment of the Maine coastal zone is already significantly developed. The northeastern segment by contrast is far enough away from the larger population centers to escape immediate urbanization and development pressures. The mid-coast segment experiences more pressures, is the most diverse environmentally and socially, and is consequently in more urgent need of effective management than the other segments of the Maine coast. Due to these factors, its size, the availability of data, and its proximity to the center of government, the state chose to begin the coastal management program in the mid-coast segment and then extend the knowledge and experience there to develop and refine a CZM program for the remaining northeastern and southwestern coastal segments.

Resource data for the other regions is in some cases much less developed. This has been a major factor in the delay of completion in these segments. Delaying approval for the mid-coast region while this data is collected and mapped would result in delaying implementation of the CZM program at the regional level. Because the region is based on a natural unit, and because other necessary requirements have been met, the benefits from such delay would appear slight, and more than offset by the adverse impact in delay of program implementation.

Although the Federal consistency provision will apply only to the mid-coast segment, the state maintains that this is the area where consistent management is the most important in the short term. In addition, segmentation provides the opportunity to test and evaluate Maine's system for reviewing and judging Federal consistency prior to its institution statewide.

The Secretary could delay approval of the Maine CZM program until legislation is passed for comprehensive statewide and nationwide land use programs.

Over the past several years there have been attempts both nationally and in some states to enact comprehensive land use legislation. Once such legislation is passed, it might be logical to merge the CZM program into the broader context of a land and water use program for each state and the nation as a whole. Delay of implementation of CZM program in Maine would allow the state to create one resource management program rather than having to go through the policy, administrative and institutional difficulties of melding the CZM program with a statewide land use program.

In Maine, the status of an effort to pass comprehensive state land use legislation is uncertain. Waiting for such legislation could waste valuable time needed to deal with coastal problems in a timely manner. Maine has passed strong environmental legislation to deal with the conflicts between development and conservation; the problem has been the lack of technical assistance to administer these laws properly. Delay in funding the CZM program may further jeopardize the effective administration of existing legislation which is key to the implementation of the state's coastal zone management program.

Delay in CZM program approval for Maine will not terminate the coastal management program which is well underway. Rather, it would serve to delay its full implementation. Thus, lack of CZM program approval would not cause the State of Maine to await a comprehensive land use program. Only a complete reversal of state policy would do that.

The Maine CZM program is, in effect, serving as a pilot program for a more comprehensive land use program in a critical environmentally valuable geographic area of the state. Much can be learned from the coastal management experience which could be applied to all the lands of the state. In the meantime, Maine's coastal resources, the most threatened and perhaps most valuable in the state, are starting to be effectively managed on a shared state-regional-local basis. Waiting for a comprehensive land use program may cause a delay sufficient to allow the loss or damage of many of these valuable resources.

The Secretary could delay CZM program approval until the Federal establishment has developed specific policies for the siting of facilities meeting requirements which are of national interest.

The CZM Act requires that adequate consideration be given to the national interest in siting of certain facilities within a state's coastal zone. The state has considered and provides for many of these needs including defense installations, port facilities, power generating complexes and fisheries management. Legislative authority to insure that all such facilities meet both state and national needs would be beneficial to the CZM program. However, until Federal agencies formulate long-term plans which indicate national and regional needs for such facilities within the country, decisions will be made largely on a case by case basis and thus state legislation could, at best, have a limited impact on promoting the national interest. It is expected that until such national policies are promulgated by the Federal government, the authorities the State of Maine has in the Site Location of Development Act and the CZM Act will be adequate to provide for the national interest in siting such facilities. In addition, SPO will be advised in these matters by the Federal and state coordination mechanisms established to deal with the national and state interests in the siting of facilities.

Maine considers, and OCZM concurs, that there is a need for developing an affirmative siting program for major facilities of statewide, regional and national concern. The proposed Maine program provides the initial physical, biological and cultural analysis to establish such a system even though it is not required by the current Coastal Zone Management Act.

## B. Implementation and Control Alternatives for the State CZM Program

The State could consolidate all regulatory authorities in the Department of Environmental Protection and administer CZM through DEP.

The principal CZM-related permit programs are presently administered by DEP, either unilaterally or in consultation with other state agencies. DEP has indicated that it will utilize the suitability/capability maps in reaching permit decisions. Hence, it might appear efficient to have DEP administer the State's CZM program. This would house the program within a single functional agency rather than hinging implementation upon a structure which spreads responsibility both at the state level and among the state, regional and local levels.

However, although the Maine system is a complex one, as presently structured it is a balanced one which involves state agencies and regional and local entities as well. The SPO, within the Executive Department, has a close relationship to the Governor and serves to coordinate a number of his planning and policy-making functions. In addition to administering the A-95 system, an important tool in judging Federal consistency, the SPO handles State-Federal coordination.

The SPO works more closely with regional planning commissions than do other state agencies and has a direct policy and budgetary relationship with the commissions. While other agencies such as DEP have expressed interest in decentralizing their activities, lack of a strong relationship with the commissions as well as immediate permit processing needs may reduce involvement with the RPC's.

Most importantly, transfer of the 306 program to DEP would divorce it from ongoing planning and local management efforts. This would appear particularly critical in the case of a program being adopted in segments, since the program is necessarily an evolutionary one. In fact, if the entire CZM effort were to be transferred to DEP, segmentation might well be abandoned.

This alternative was examined by the legislature last year, but not acted upon. It is not presently under consideration and hence is judged politically infeasible.

The State of Maine could use other existing authorities for funding and implementation of a state program meeting the objectives of the CZM Act.

Maine might utilize the National Marine Sanctuary provisions of the Ocean Dumping Act, the Estuarine Sanctuary provisions of the CZM Act, the HUD 701 program, Areawide Waste Treatment Management Programs (Section 208, P.L. 92-500, the Site Location and Development Act, the Mandatory Shoreline Zoning Act, the National Environmental Policy Act (NEPA), the Clean Air Act, local comprehensive plans, flood zone and other permit authorities, and other such activities to implement its coastal zone program.

The proliferation of authorities which place controls upon land and water use has questionable utility, especially when they overlap significantly. There is no question that the objectives of the proposed CZM program coincide to some degree with the objectives of the authorities listed above. Maine's environmental legislation has gone a long way in meeting the concepts described in the CZM Act. However, administration and enforcement of current legislation has suffered because of inadequate financial and technical resources to implement legislative provisions effectively.

In addition, the basic purposes of the CZM Act, "to promote effective management, beneficial use, protection, and development of the coastal zone" and to develop "unified policies, criteria, standards, methods and processes for dealing with land and water use decisions of more than local significance" are not completely covered by any of these authorities. Furthermore, none of the existing authorities except the CZM Act have basic requirements for consistency with an approved program of Federal actions affecting the coastal zone nor for consideration of the national interest involved in the siting of facilities necessary to meet requirements which are other than local in nature. Without the CZM framework, existing authorities are either very general in nature or have a specific or single purpose intent.

The Estuarine and Marine Sanctuary provisions are designed to preserve water areas for specific values (research, educational, recreational, historic, esthetic, etc.) but forbid industrial, commercial or residential uses. The HUD 701 program has provided some funds to regional planning commissions but not enough to enable development of regional land use plans. NEPA, the Clean Air Act and the Water Pollution Control Act have as their objective adequate consideration and regulation of air and water quality. While these are fundamental to and an integral part of the CZM program, they are insufficient to direct the effective balance between conservation and development that is intended by CZM. Existing permits are designed for specific purposes (air quality protection, water quality, water table reductions, preservation of food fish resources, wildlife protection, compliance with zoning laws, etc.) but cannot be used effectively to comprehensively plan and manage the resources of the coastal zone, which is one of the major unifying thrusts of CZM. The Site Location of Development Act and the Mandatory Shoreline Zoning Act provide for regulation but do not establish a comprehensive planning framework within which decisions can be made. It is clear then, that these current authorities fill many of the individual requirements of the CZM Act and will be an integral part of Maine's program, but do not individually or separately provide for the comprehensive land and water use management program called for by the Act and implemented through program approval.

The state might exert complete control over the implementation of the CZM Program.

This alternative would result in policies, regulations and control being imposed by the state and applied statewide. The state would be less vulnerable to conflict of interest pressures than local governments, which have to regulate development projects that are the primary source for their tax base. Administration would be centralized. A statewide plan could be developed and implemented. Intergovernmental coordination requirements would be significantly lessened and interstate cooperation and coordination would be easier. It would meet the intentions of the CZM Act that states effectively exercise their responsibilities in the coastal zone.

Total state control of CZM implementation, however, would require new legislation by the State of Maine. Although this certainly is possible, the conflicts produced by the existing state environmental legislation indicates that such a step would not be acceptable to the people of the state. Total state control would be inconsistent with the tradition of home-rule; it would take responsibility and power from the local government, and thereby would almost certainly engender significant local obstruction of the program.

In contrast to the above alternative, county and city governments might exert complete control over implementation of the CZM program with no overall guidelines and performance standards from the state. CZM money would be given directly to local governments through an organization such as an association of counties.

In this case local concerns and conditions would be handled solely by local governments. This alternative would essentially imply that local governments could continue to conduct "business as usual," a condition which is at least in part responsible for the degradation of the resources of some coastal areas. This alternative could not be acceptable under the conditions of the CZM Act, which requires that states must assert their full authorities and responsibilities in management of the resources of the coast. Furthermore, recognition that land use decisions often have significant impacts which transcend local boundaries, the Act stipulates that CZM grants must be awarded to states. In essence, total local control is incompatible with the objectives of coastal zone management, not allowable under the Act, and inconsistent with existing state law.

County governments in Maine are not strong. There is a measure in the legislature to abolish the county structure, revising and centralizing services into a regional unit. There is no longer a planning function at the county level; it has been given to the regional planning commissions.

#### C. Alternatives to Proposed Program Elements

The state could change the boundary designated as the coastal zone.

One alternative boundary change would be from first tier towns to a specified distance (i.e. 250,500 feet) from the shoreline. The advantage to this boundary would be a lessening in administrative responsibility. However, such a boundary would be arbitrary and would not meet the intentions of the Act to develop a comprehensive approach to coastal land and water use management. Nor would such a boundary reflect the diversity of physical, hydrological and political circumstances within Maine's coastal zone. Land uses and activities which have a direct and significant impact on the coast are not contained within an arbitrary distance from the shore. The Maine CZM program identifies two different categories of land use which are of state concern because they affect the quality of coastal waters. These include: 1) small scale developments located directly adjacent to the shore and 2) development of significant size having substantial state or regional impact regardless of its proximity to coastal waters.

This alternative would also tend to intensify border conflicts and questions of equity between uses within a narrowly defined zone and those located just outside the zone. The designation of such an arbitrary boundary may tend to increase the development pressure on adjacent lands immediately inland from the boundary (that is, just outside of the coastal zone).

Another alternative would be to change the boundary to make the coastal zone coterminous with the State's Regional Planning and Development Districts. The districts were drawn up on the basis of economic, environmental, land and water control and management considerations. According to these factors, the coastal and inland area of a region are interrelated. State agencies have been directed to make plans and collect data by these regional districts. Since the coastal influence extends inland, the regional district might seem an appropriate boundary for coastal zone management. With this boundary, more of the state would come under a comprehensive planning system sooner. Between the coastal regions' coastal zone program and the state's Land Use Regulation Commission for unincorporated areas, most of the state would be under a land use guidance system.

While there would be benefits to using the coastal regional districts as the coastal zone, time and money diminish the attractiveness of this alternative. It would take more time and more money to include the entire area of the coastal regions. The resource inventory alone would delay the development and application of regional plans. The urgency of dealing with coastal problems makes it necessary to concentrate on the coastal sections of the regions, those most immediately influenced by coastal problems and issues.

The boundary Maine has chosen, first tier towns, coincides with the influence on coastal waters most directly. It also contains 45% of the state's population.

Another alternative boundary for the coastal zone might be a transportation-related boundary, the Maine Turnpike from Kittery to Bangor and Route 9 from Bangor to Calais. This transportation route heavily influences the coastal region as it channels people and products to and from the coast. This boundary would incorporate the primary economic region in Maine, but, again, expands the area of consideration beyond the area most immediately influenced by coastal problems and pressures. It would increase the administrative workload without yielding proportional benefit in terms of solving coastal problems. The proposed boundary for the coastal zone includes the major urban areas which the transportation network services (Portland, Brunswick, Bangor, Augusta, Waterville). In addition, the Site Location of Development Act deals within these "extended" boundaries under the proposed program, thus controlling major development proposals without the need for extended geographic jurisdiction.

The coverage of development review and permit issuance under the Site Location of Development Act could be expanded to include roads and borrow pits.

Roads and borrow pits are presently exempt from permit review under the Site Location of Development Act. Since they can have significant effects on the coastal environment, it is important that their planning and location



reflect environmental and socio-economic factors. Their inclusion under the permit requirement of the Site Location of Development Act would require new state legislation. Lacking this legislation, OCZM has recommended that the State Planning Office and the State Highway Commission enter into an agreement of understanding which would insure that the state CZM resource inventory and analysis is incorporated into the decision-making process concerning roads and borrow pits.

#### VII. PROBABLE ADVERSE ENVIRONMENTAL EFFECTS WHICH CANNOT BE AVOIDED

While an overall assessment of the probable effects would indicate the Maine coastal zone management program is environmentally beneficial, a number of potential adverse impacts can be identified.

The administration of the state CZM program, the coordinating mechanisms it applies, and the regional plans which will develop under the program will assure that some areas will be developed more fully and more swiftly than if development were to proceed in a fragmented, less controlled fashion. This will result in the loss of environmental amenities associated with those resources. This will be offset by a corresponding increased protection of other areas and resources.

The same program, regulations and plans will reduce or restrict the usability of some lands; this may result in diminished value for some coastal property, with a loss to the property owner and a decrease in property taxes.

Resource extraction or exploitation, especially timber harvest, may be restricted or prohibited in some (a small percentage) of coastal lands.

Finally, population and industrial growth will be limited to specific areas, with the result that both will ultimately become more densely concentrated.

VIII. RELATIONSHIP BETWEEN LOCAL SHORT-TERM USES OF THE ENVIRONMENT AND THE MAINTENANCE AND ENHANCEMENT OF LONG-TERM PRODUCTIVITY

While approval of the proposed state coastal zone management program will restrict local, short-term uses of the environment, it will also provide a long-term assurance that the natural resources and benefits provided by the Maine coast will be available for future use and enjoyment. This theme is central to the state and Federal CZM programs.

Without the implementation of rationally based land and water use management programs intense short-term uses and gains, such as provided by residential or industrial development, might be realized. However, such uses would most likely result in long-term restrictions on coastal resource use and benefit because of degradation of the environment. Without proper management the traditional conflicts between coastal resource users -- residential, commercial, industrial, timber, recreational, and wildlife -- could be expected to occur.

By providing a sound basis for decision-making, and by protecting the important segments of the natural system, the management program will directly contribute to the long-term maintenance of the environment.

IX. IRREVOCABLE OR IRRETRIEVABLE COMMITMENTS OF RESOURCES THAT WOULD BE INVOLVED IN THE PROPOSED ACTION SHOULD IT BE IMPLEMENTED.

The approval of the state coastal zone management program, and implementation of the regional planning commission comprehensive plans will lead certain areas of the Maine coastline to be intensely, and for all practical purposes, irrevocably developed. This will cause the loss of some environmental resources. Development would occur in the absence of program approval but the CZM program will channel such activity with appropriate but discreet sites. A limited amount of timber and perhaps mineral resources will also be removed from direct commercial exploitation.

## X. CONSULTATION AND COORDINATION WITH OTHERS

The SPO has solicited participation by a variety of state and Federal agencies, local governments, special interest groups and the public at large during the preparation of its coastal zone management program. A partial list of those involved includes representatives of local governments, regional planning commissions, state agencies, and various Federal agencies, such as EPA, FPC, FEA, Federal Highway Administration, U.S. Forest Service, U.S. Soil Conservation Service, Bureau of Outdoor Recreation, U.S. Fish and Wildlife Service, National Park Service, U.S. Geological Survey, NOAA, and the U.S. Army Corps of Engineers. Coordination and consultation between the state and substate entities and citizens has been principally through the regional planning commissions, in the form of public meetings and contacts with local officials, citizens advisory committees, and various interest groups. In addition, the state will work through the Federal-State Coordinator's Office in the Executive Department and the New England River Basin Commission in coordinating with Federal agencies and dealing with questions of Federal consistency under the Coastal Zone Management Act.

Assistance in consulting with Federal officials has been provided by the staff of the Office of Coastal Zone Management. In addition to OCZM's unilateral and group consultation with all principal Federal agencies, specific discussions of Maine's general approach to CZM have been initiated with the following headquarters agencies: The National Park Service, Environmental Protection Agency, Oceanographer of the Navy, Federal Energy Administration, Coast Guard, and the Department of Housing and Urban Development.

OCZM will also give a full presentation of the Federal agency involvement in CZM and Maine's program to the regional officials hosted by the New England River Basins Commission on March 25, 1975. This follows up on an earlier presentation given to these officials in November, 1974.

An ad hoc group of secretarial representatives of principal agencies will be convened in early April to act as a single point of contact for the Maine mid-coast segment review process.

# XI. PUBLIC HEARING

As a part of the review and comment process pursuant to this proposal, public hearings for the purpose of receiving information and comments from concerned public and private organizations and citizens will be held at 7:30 p.m. on May 5 and May 6, 1975 at the following locations:

May 5, 1975      Wiscasset Municipal Building  
                    Wiscasset, Maine

May 6, 1975      Ellsworth City Hall  
                    Ellsworth, Maine

Persons wishing to make a statement at the hearing should so inform:

Edward T. LaRoe  
Office of Coastal Zone Management  
National Oceanic and Atmospheric Administration  
Rockville, Maryland 20852 (phone: 301 496-8896)

of their desires. It may be necessary to impose a time limit on speakers.

Both written and oral statements will be accepted. Comments should address the adequacy of the draft Environmental Impact Statement as well as the desirability of the proposed action.

Copies of the complete state application, with supporting documents, will be available for public inspection at the following locations:

Eastern Mid-Coast Regional Planning Commission  
423 Main Street  
Rockland, Maine 04841

Hancock County Regional Planning Commission  
69 Main Street  
Ellsworth, Maine 04605

Penobscot Valley Regional Planning Commission  
31 Central Street  
Bangor, Maine 04401

Southern Mid-Coast Regional Planning Commission  
52 Front Street  
Bath, Maine 04530

Maine State Planning Office  
184 State Street  
Augusta, Maine 04330

And at the following locations in the vicinity of Washington, D.C. :

Office of Coastal Zone Management  
NOAA

From March 21 to March 31  
11400 Rockville Pike  
Room 306  
Rockville, Maryland 20852

From April 2 to May 21  
3300 White haven St., N.W.  
Page 1 Building  
Room 301  
Washington, D. C. 20235

Department of Commerce  
Main Commerce Building  
14th & Constitution, N.W.  
Room 7046  
Washington, D.C. 20230

## SELECTED REFERENCES

Governor's Task Force. 1972. Report of the Governor's Task Force on Energy, Heavy Industry and the Maine Coast. Augusta, Maine.

Maine Department of Commerce and Industry. 1973. Maine Economic Data Book. Augusta, Maine.

Maine Parks and Recreation. 1972. Maine Comprehensive Outdoor Recreation Plan. 3 vols. Augusta, Maine.

Maine State Planning Office. 1974. An Introduction to the Maine Coastal Plan. Augusta, Maine.

Maine State Planning Office. 1974. An Introduction to Statistics for the Maine Coastal Zone. Augusta, Maine.

Maine State Planning Office. 1974. A Survey of Municipal Planning and Regulatory Activity. Augusta, Maine.

Maine State Planning Office. 1971. Maine Coastal Resources Renewal. Augusta, Maine.

New England Rivers Basin Commission. 1971. Regional and National Demands on the Maine Coast. Boston, Massachusetts.

Smithsonian Institution, Center for Natural Areas. 1973. Conservation Priorities Plan of the Coast of Maine. Washington, D. C.

APPENDIX 1  
PUBLIC LAW 92-583  
COASTAL ZONE MANAGEMENT  
ACT OF 1972



Public Law 92-583  
92nd Congress, S. 3507  
October 27, 1972

## An Act

86 STAT. 1280

To establish a national policy and develop a national program for the management, beneficial use, protection, and development of the land and water resources of the Nation's coastal zones, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Act entitled "An Act to provide for a comprehensive, long-range, and coordinated national program in marine science, to establish a National Council on Marine Resources and Engineering Development, and a Commission on Marine Science, Engineering and Resources, and for other purposes", approved June 17, 1966 (80 Stat. 203), as amended (33 U.S.C. 1101-1124), is further amended by adding at the end thereof the following new title:

Marine Resources and Engineering Development Act of 1966, amendment.

80 Stat. 998;  
84 Stat. 865.

### TITLE III—MANAGEMENT OF THE COASTAL ZONE

#### SHORT TITLE

SEC. 301. This title may be cited as the "Coastal Zone Management Act of 1972".

#### CONGRESSIONAL FINDINGS

SEC. 302. The Congress finds that—

(a) There is a national interest in the effective management, beneficial use, protection, and development of the coastal zone;

(b) The coastal zone is rich in a variety of natural, commercial, recreational, industrial, and esthetic resources of immediate and potential value to the present and future well-being of the Nation;

(c) The increasing and competing demands upon the lands and waters of our coastal zone occasioned by population growth and economic development, including requirements for industry, commerce, residential development, recreation, extraction of mineral resources and fossil fuels, transportation and navigation, waste disposal, and harvesting of fish, shellfish, and other living marine resources, have resulted in the loss of living marine resources, wildlife, nutrient-rich areas, permanent and adverse changes to ecological systems, decreasing open space for public use, and shoreline erosion;

(d) The coastal zone, and the fish, shellfish, other living marine resources, and wildlife therein, are ecologically fragile and consequently extremely vulnerable to destruction by man's alterations;

(e) Important ecological, cultural, historic, and esthetic values in the coastal zone which are essential to the well-being of all citizens are being irretrievably damaged or lost;

(f) Special natural and scenic characteristics are being damaged by ill-planned development that threatens these values;

(g) In light of competing demands and the urgent need to protect and to give high priority to natural systems in the coastal zone, present state and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate; and

(h) The key to more effective protection and use of the land and water resources of the coastal zone is to encourage the states to exercise their full authority over the lands and waters in the coastal zone by assisting the states, in cooperation with Federal and local governments and other vitally affected interests, in developing land and water use programs for the coastal zone, including unified policies, criteria, standards, methods, and processes for dealing with land and water use decisions of more than local significance.





## DECLARATION OF POLICY

SEC. 303. The Congress finds and declares that it is the national policy (a) to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations, (b) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone giving full consideration to ecological, cultural, historic, and esthetic values as well as to needs for economic development, (c) for all Federal agencies engaged in programs affecting the coastal zone to cooperate and participate with state and local governments and regional agencies in effectuating the purposes of this title, and (d) to encourage the participation of the public, of Federal, state, and local governments and of regional agencies in the development of coastal zone management programs. With respect to implementation of such management programs, it is the national policy to encourage cooperation among the various state and regional agencies including establishment of interstate and regional agreements, cooperative procedures, and joint action particularly regarding environmental problems.

## DEFINITIONS

SEC. 304. For the purposes of this title—

(a) "Coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of the United States territorial sea. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents.

(b) "Coastal waters" means (1) in the Great Lakes area, the waters within the territorial jurisdiction of the United States consisting of the Great Lakes, their connecting waters, harbors, roadsteads, and estuary-type areas such as bays, shallows, and marshes and (2) in other areas, those waters, adjacent to the shorelines, which contain a measurable quantity or percentage of sea water, including, but not limited to, sounds, bays, lagoons, bayous, ponds, and estuaries.

(c) "Coastal state" means a state of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. For the purposes of this title, the term also includes Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(d) "Estuary" means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage. The term includes estuary-type areas of the Great Lakes.

(e) "Estuarine sanctuary" means a research area which may include any part or all of an estuary, adjoining transitional areas, and adjacent uplands, constituting to the extent feasible a natural unit, set

aside to provide scientists and students the opportunity to examine over a period of time the ecological relationships within the area.

(f) "Secretary" means the Secretary of Commerce.

(g) "Management program" includes, but is not limited to, a comprehensive statement in words, maps, illustrations, or other media of communication, prepared and adopted by the state in accordance with the provisions of this title, setting forth objectives, policies, and standards to guide public and private uses of lands and waters in the coastal zone.

(h) "Water use" means activities which are conducted in or on the water; but does not mean or include the establishment of any water quality standard or criteria or the regulation of the discharge or runoff of water pollutants except the standards, criteria, or regulations which are incorporated in any program as required by the provisions of section 307(f).

(i) "Land use" means activities which are conducted in or on the shorelands within the coastal zone, subject to the requirements outlined in section 307(g).

#### MANAGEMENT PROGRAM DEVELOPMENT GRANTS

SEC. 305. (a) The Secretary is authorized to make annual grants to any coastal state for the purpose of assisting in the development of a management program for the land and water resources of its coastal zone.

(b) Such management program shall include:

(1) an identification of the boundaries of the coastal zone subject to the management program;

(2) a definition of what shall constitute permissible land and water uses within the coastal zone which have a direct and significant impact on the coastal waters;

(3) an inventory and designation of areas of particular concern within the coastal zone;

(4) an identification of the means by which the state proposes to exert control over the land and water uses referred to in paragraph (2) of this subsection, including a listing of relevant constitutional provisions, legislative enactments, regulations, and judicial decisions;

(5) broad guidelines on priority of uses in particular areas, including specifically those uses of lowest priority;

(6) a description of the organizational structure proposed to implement the management program, including the responsibilities and interrelationships of local, area-wide, state, regional, and interstate agencies in the management process.

(c) The grants shall not exceed 66⅔ per centum of the costs of the program in any one year and no state shall be eligible to receive more than three annual grants pursuant to this section. Federal funds received from other sources shall not be used to match such grants. In order to qualify for grants under this section, the state must reasonably demonstrate to the satisfaction of the Secretary that such grants will be used to develop a management program consistent with the requirements set forth in section 306 of this title. After making the initial grant to a coastal state, no subsequent grant shall be made under this section unless the Secretary finds that the state is satisfactorily developing such management program.

Limitation.

(d) Upon completion of the development of the state's management program, the state shall submit such program to the Secretary for

Grants,  
allocation.

review and approval pursuant to the provisions of section 306 of this title, or such other action as he deems necessary. On final approval of such program by the Secretary, the state's eligibility for further grants under this section shall terminate, and the state shall be eligible for grants under section 306 of this title.

(e) Grants under this section shall be allocated to the states based on rules and regulations promulgated by the Secretary: *Provided, however,* That no management program development grant under this section shall be made in excess of 10 per centum nor less than 1 per centum of the total amount appropriated to carry out the purposes of this section.

(f) Grants or portions thereof not obligated by a state during the fiscal year for which they were first authorized to be obligated by the state, or during the fiscal year immediately following, shall revert to the Secretary, and shall be added by him to the funds available for grants under this section.

80 Stat. 1262;  
82 Stat. 208.  
42 USC 3334.

(g) With the approval of the Secretary, the state may allocate to a local government, to an areawide agency designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, to a regional agency, or to an interstate agency, a portion of the grant under this section, for the purpose of carrying out the provisions of this section.

Expiration  
date.

(h) The authority to make grants under this section shall expire on June 30, 1977.

#### ADMINISTRATIVE GRANTS

Limitation.

SEC. 306. (a) The Secretary is authorized to make annual grants to any coastal state for not more than 66 $\frac{2}{3}$  per centum of the costs of administering the state's management program, if he approves such program in accordance with subsection (c) hereof. Federal funds received from other sources shall not be used to pay the state's share of costs.

Allocation.

(b) Such grants shall be allocated to the states with approved programs based on rules and regulations promulgated by the Secretary which shall take into account the extent and nature of the shoreline and area covered by the plan, population of the area, and other relevant factors: *Provided, however,* That no annual administrative grant under this section shall be made in excess of 10 per centum nor less than 1 per centum of the total amount appropriated to carry out the purposes of this section.

Program  
requirements.

(c) Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that:

(1) The state has developed and adopted a management program for its coastal zone in accordance with rules and regulations promulgated by the Secretary, after notice, and with the opportunity of full participation by relevant Federal agencies, state agencies, local governments, regional organizations, port authorities, and other interested parties, public and private, which is adequate to carry out the purposes of this title and is consistent with the policy declared in section 303 of this title.

(2) The state has:

(A) coordinated its program with local, areawide, and interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the state's management program is submitted to the Secretary, which plans have been developed by a local government, an areawide agency designated pursuant to regulations established under section 204 of the Demonstration

Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency; and

80 Stat. 1262;

82 Stat. 208.

42 USC 3334.

(B) established an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (5) of this subsection and with local governments, interstate agencies, regional agencies, and areawide agencies within the coastal zone to assure the full participation of such local governments and agencies in carrying out the purposes of this title.

(3) The state has held public hearings in the development of the management program.

(4) The management program and any changes thereto have been reviewed and approved by the Governor.

(5) The Governor of the state has designated a single agency to receive and administer the grants for implementing the management program required under paragraph (1) of this subsection.

(6) The state is organized to implement the management program required under paragraph (1) of this subsection.

(7) The state has the authorities necessary to implement the program, including the authority required under subsection (d) of this section.

(8) The management program provides for adequate consideration of the national interest involved in the siting of facilities necessary to meet requirements which are other than local in nature.

(9) The management program makes provision for procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological, or esthetic values.

(d) Prior to granting approval of the management program, the Secretary shall find that the state, acting through its chosen agency or agencies, including local governments, areawide agencies designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, regional agencies, or interstate agencies, has authority for the management of the coastal zone in accordance with the management program. Such authority shall include power—

(1) to administer land and water use regulations, control development in order to ensure compliance with the management program, and to resolve conflicts among competing uses; and

(2) to acquire fee simple and less than fee simple interests in lands, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.

(e) Prior to granting approval, the Secretary shall also find that the program provides:

(1) for any one or a combination of the following general techniques for control of land and water uses within the coastal zone;

(A) State establishment of criteria and standards for local implementation, subject to administrative review and enforcement of compliance;

(B) Direct state land and water use planning and regulation; or

(C) State administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any state or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings.

(2) for a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit.

80 Stat. 1262; 1966, a regional agency, or an interstate agency, a portion of the grant under this section for the purpose of carrying out the provisions of this section: *Provided*, That such allocation shall not relieve the state of the responsibility for ensuring that any funds so allocated are applied in furtherance of such state's approved management program.

82 Stat. 209. 42 USC 3334. (g) The state shall be authorized to amend the management program. The modification shall be in accordance with the procedures required under subsection (c) of this section. Any amendment or modification of the program must be approved by the Secretary before additional administrative grants are made to the state under the program as amended.

Program modification. (h) At the discretion of the state and with the approval of the Secretary, a management program may be developed and adopted in segments so that immediate attention may be devoted to those areas within the coastal zone which most urgently need management programs: *Provided*, That the state adequately provides for the ultimate coordination of the various segments of the management program into a single unified program and that the unified program will be completed as soon as is reasonably practicable.

Segmental development.

#### INTERAGENCY COORDINATION AND COOPERATION

SEC. 307. (a) In carrying out his functions and responsibilities under this title, the Secretary shall consult with, cooperate with, and, to the maximum extent practicable, coordinate his activities with other interested Federal agencies.

(b) The Secretary shall not approve the management program submitted by a state pursuant to section 306 unless the views of Federal agencies principally affected by such program have been adequately considered. In case of serious disagreement between any Federal agency and the state in the development of the program the Secretary, in cooperation with the Executive Office of the President, shall seek to mediate the differences.

(c)(1) Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs.

(2) Any Federal agency which shall undertake any development project in the coastal zone of a state shall insure that the project is, to the maximum extent practicable, consistent with approved state management programs.

Certification. (3) After final approval by the Secretary of a state's management program, any applicant for a required Federal license or permit to conduct an activity affecting land or water uses in the coastal zone of that state shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the state's approved program and that such activity will be conducted in a manner consistent with the program. At the same time, the applicant shall furnish to the state or its designated agency a copy of the certification, with all necessary information and data. Each coastal state shall establish procedures for public notice in the case of all such

certifications and, to the extent it deems appropriate, procedures for public hearings in connection therewith. At the earliest practicable time, the state or its designated agency shall notify the Federal agency concerned that the state concurs with or objects to the applicant's certification. If the state or its designated agency fails to furnish the required notification within six months after receipt of its copy of the applicant's certification, the state's concurrence with the certification shall be conclusively presumed. No license or permit shall be granted by the Federal agency until the state or its designated agency has concurred with the applicant's certification or until, by the state's failure to act, the concurrence is conclusively presumed, unless the Secretary, on his own initiative or upon appeal by the applicant, finds, after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state, that the activity is consistent with the objectives of this title or is otherwise necessary in the interest of national security.

Notification.

(d) State and local governments submitting applications for Federal assistance under other Federal programs affecting the coastal zone shall indicate the views of the appropriate state or local agency as to the relationship of such activities to the approved management program for the coastal zone. Such applications shall be submitted and coordinated in accordance with the provisions of title IV of the Intergovernmental Coordination Act of 1968 (82 Stat. 1098). Federal agencies shall not approve proposed projects that are inconsistent with a coastal state's management program, except upon a finding by the Secretary that such project is consistent with the purposes of this title or necessary in the interest of national security.

42 USC 4231.

(e) Nothing in this title shall be construed—

(1) to diminish either Federal or state jurisdiction, responsibility, or rights in the field of planning, development, or control of water resources, submerged lands, or navigable waters; nor to displace, supersede, limit, or modify any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more states or of two or more states and the Federal Government; nor to limit the authority of Congress to authorize and fund projects;

(2) as superseding, modifying, or repealing existing laws applicable to the various Federal agencies; nor to affect the jurisdiction, powers, or prerogatives of the International Joint Commission, United States and Canada, the Permanent Engineering Board, and the United States operating entity or entities established pursuant to the Columbia River Basin Treaty, signed at Washington, January 17, 1961, or the International Boundary and Water Commission, United States and Mexico.

(f) Notwithstanding any other provision of this title, nothing in this title shall in any way affect any requirement (1) established by the Federal Water Pollution Control Act, as amended, or the Clean Air Act, as amended, or (2) established by the Federal Government or by any state or local government pursuant to such Acts. Such requirements shall be incorporated in any program developed pursuant to this title and shall be the water pollution control and air pollution control requirements applicable to such program.

*Ante*, p. 816.  
81 Stat. 485;  
84 Stat. 1676.  
42 USC 1857  
note.

(g) When any state's coastal zone management program, submitted for approval or proposed for modification pursuant to section 306 of this title, includes requirements as to shorelands which also would be subject to any Federally supported national land use program which may be hereafter enacted, the Secretary, prior to approving such pro-

gram, shall obtain the concurrence of the Secretary of the Interior, or such other Federal official as may be designated to administer the national land use program, with respect to that portion of the coastal zone management program affecting such inland areas.

#### PUBLIC HEARINGS

SEC. 308. All public hearings required under this title must be announced at least thirty days prior to the hearing date. At the time of the announcement, all agency materials pertinent to the hearings, including documents, studies, and other data, must be made available to the public for review and study. As similar materials are subsequently developed, they shall be made available to the public as they become available to the agency.

#### REVIEW OF PERFORMANCE

SEC. 309. (a) The Secretary shall conduct a continuing review of the management programs of the coastal states and of the performance of each state.

Financial  
assistance,  
termination.

(b) The Secretary shall have the authority to terminate any financial assistance extended under section 306 and to withdraw any unexpended portion of such assistance if (1) he determines that the state is failing to adhere to and is not justified in deviating from the program approved by the Secretary; and (2) the state has been given notice of the proposed termination and withdrawal and given an opportunity to present evidence of adherence or justification for altering its program.

#### RECORDS

SEC. 310. (a) Each recipient of a grant under this title shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition of the funds received under the grant, the total cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

Audit.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of the grant that are pertinent to the determination that funds granted are used in accordance with this title.

#### ADVISORY COMMITTEE

Coastal Zone  
Management  
Advisory  
Committee,  
establishment,  
membership.

SEC. 311. (a) The Secretary is authorized and directed to establish a Coastal Zone Management Advisory Committee to advise, consult with, and make recommendations to the Secretary on matters of policy concerning the coastal zone. Such committee shall be composed of not more than fifteen persons designated by the Secretary and shall perform such functions and operate in such a manner as the Secretary may direct. The Secretary shall insure that the committee membership as a group possesses a broad range of experience and knowledge relating to problems involving management, use, conservation, protection, and development of coastal zone resources.

Compensation,  
travel ex-  
penses.

(b) Members of the committee who are not regular full-time employees of the United States, while serving on the business of the committee, including traveltime, may receive compensation at rates not exceeding \$100 per diem; and while so serving away from their

homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for individuals in the Government service employed intermittently.

80 Stat. 499;  
83 Stat. 190.

#### ESTUARINE SANCTUARIES

SEC. 312. The Secretary, in accordance with rules and regulations promulgated by him, is authorized to make available to a coastal state grants of up to 50 per centum of the costs of acquisition, development, and operation of estuarine sanctuaries for the purpose of creating natural field laboratories to gather data and make studies of the natural and human processes occurring within the estuaries of the coastal zone. The Federal share of the cost for each such sanctuary shall not exceed \$2,000,000. No Federal funds received pursuant to section 305 or section 306 shall be used for the purpose of this section.

Grants.

Federal share.

#### ANNUAL REPORT

SEC. 313. (a) The Secretary shall prepare and submit to the President for transmittal to the Congress not later than November 1 of each year a report on the administration of this title for the preceding fiscal year. The report shall include but not be restricted to (1) an identification of the state programs approved pursuant to this title during the preceding Federal fiscal year and a description of those programs; (2) a listing of the states participating in the provisions of this title and a description of the status of each state's programs and its accomplishments during the preceding Federal fiscal year; (3) an itemization of the allocation of funds to the various coastal states and a breakdown of the major projects and areas on which these funds were expended; (4) an identification of any state programs which have been reviewed and disapproved or with respect to which grants have been terminated under this title, and a statement of the reasons for such action; (5) a listing of all activities and projects which, pursuant to the provisions of subsection (c) or subsection (d) of section 307, are not consistent with an applicable approved state management program; (6) a summary of the regulations issued by the Secretary or in effect during the preceding Federal fiscal year; (7) a summary of a coordinated national strategy and program for the Nation's coastal zone including identification and discussion of Federal, regional, state, and local responsibilities and functions therein; (8) a summary of outstanding problems arising in the administration of this title in order of priority; and (9) such other information as may be appropriate.

(b) The report required by subsection (a) shall contain such recommendations for additional legislation as the Secretary deems necessary to achieve the objectives of this title and enhance its effective operation.

#### RULES AND REGULATIONS

SEC. 314. The Secretary shall develop and promulgate, pursuant to section 553 of title 5, United States Code, after notice and opportunity for full participation by relevant Federal agencies, state agencies, local governments, regional organizations, port authorities, and other interested parties, both public and private, such rules and regulations as may be necessary to carry out the provisions of this title.

80 Stat. 383.



## AUTHORIZATION OF APPROPRIATIONS

SEC. 315. (a) There are authorized to be appropriated—

(1) the sum of \$9,000,000 for the fiscal year ending June 30, 1973, and for each of the fiscal years 1974 through 1977 for grants under section 305, to remain available until expended;

(2) such sums, not to exceed \$30,000,000, for the fiscal year ending June 30, 1974, and for each of the fiscal years 1975 through 1977, as may be necessary, for grants under section 306 to remain available until expended; and

(3) such sums, not to exceed \$6,000,000 for the fiscal year ending June 30, 1974, as may be necessary, for grants under section 312, to remain available until expended.

(b) There are also authorized to be appropriated such sums, not to exceed \$3,000,000, for fiscal year 1973 and for each of the four succeeding fiscal years, as may be necessary for administrative expenses incident to the administration of this title.

Approved October 27, 1972.

---

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 92-1049 accompanying H.R. 14146 (Comm. on Merchant Marine and Fisheries) and No. 92-1544 (Comm. of Conference).

SENATE REPORT No. 92-753 (Comm. on Commerce).

CONGRESSIONAL RECORD, Vol. 118 (1972):

Apr. 25, considered and passed Senate.

Aug. 2, considered and passed House, amended, in lieu of H.R. 14146.

Oct. 12, House and Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 8, No. 44:

Oct. 28, Presidential statement.

○

APPENDIX 2  
COASTAL ZONE MANAGEMENT  
PROGRAM APPROVAL REGULATIONS



# Federal register

Reprinted from FEDERAL REGISTER

THURSDAY, JANUARY 9, 1975

WASHINGTON, D.C.

Volume 40 ■ Number 6

PART I



DEPARTMENT OF  
COMMERCE

National Oceanic and  
Atmospheric Administration

COASTAL ZONE  
MANAGEMENT  
PROGRAM  
ADMINISTRATIVE GRANTS

NOTICE OF FINAL RULEMAKING

The regulations below set forth (a) criteria and procedures to be utilized in reviewing and approving coastal zone management programs pursuant to section 306 of the Act, and (b) procedures by which coastal States may apply to receive administrative grants under section 306(a) of the Act. The criteria and procedures under (a) constitute the "guidelines for section 306" referred to in 15 CFR 920.

The National Oceanic and Atmospheric Administration is publishing herewith the final regulations describing procedures for applications to receive administrative grants under section 306 of the Act. The final regulations and criteria published herewith were revised from the proposed guidelines based on the comments received. A total of thirty-two (32) States, agencies, organizations and individuals submitted responses to the proposed section 306 guidelines published in the FEDERAL REGISTER on August 21, 1974. Of those responses received, nine (9) were wholly favorable as to the nature and content of the guidelines as they appeared in the FEDERAL REGISTER on August 21, 1974. Twenty-three (23) commentators submitted suggestions concerning the proposed Section 306 guidelines.

The following analysis summarizes key comments received on various sections of the draft regulations and presents a rationale for the changes made:

1. Several commentators asserted that the guidelines did not adequately reflect the environmental considerations contained in the Act. No changes were made in response to these comments since the guidelines more than adequately reflect the environmental concerns in the legislation as evidenced in part by the comment section under § 923.4:

Management programs will be evaluated in the light of the Congressional findings and policies as contained in Section 302 and Section 303 of the Act. These sections make it clear that Congress, in enacting the legislation, was concerned about the environmental degradation, damage to natural and scenic areas, loss of living marine resources and wildlife, decreasing open space for public use and shoreline erosion being brought about by population growth and economic development. The Act thus has a strong environmental thrust, stressing the 'urgent need to protect and to give high priority to natural systems in the coastal zone.

2. Several comments were received on the necessity of the Secretary of Commerce preparing and circulating an environmental impact statement on each individual State application as required by § 923.5. The National Environmental Policy Act, 42 USC 4332, and implementing regulations, 38 FR 20562, August 1, 1973, require an environmental impact statement be prepared and circulated on each individual State's application. An environmental impact statement shall be prepared on each individual State's application by the Secretary, primarily on the basis of an environmental assessment, and other relevant data, prepared and submitted by the individual States. This section

was amended to reflect the requirement of the National Environmental Policy Act environmental impact statement requirements.

3. Several comments indicated that the States did not have a clear understanding as to what was meant under § 923.11 (b) (4) which refers to Federal lands subject solely to the discretion of, or which is held in trust by, the Federal government, its officers and agents. This section has been amended in order to provide a procedure for identifying those lands which are within the framework of this section.

4. Several commentators indicated that there was uncertainty as to what the requirements of the national interest were pursuant to § 923.15. This section has been amended in order to more succinctly state what the requirements are pursuant to this section and how a State must meet these requirements during the development and administration of its coastal zone management program. At the request of several commentators, several additions have been made to the list of requirements which are other than local in nature.

5. Several commentators indicated that § 923.26, which pertains to the degree of State control needed to implement a coastal zone management program, did not offer sufficient guidance in interpreting the legislation. In response to these comments, § 923.26 has been expanded to include specific examples of how a State may implement this section.

6. Comments received indicate there was some misunderstanding in interpreting § 923.43, which deals with geographical segmentation. This section has been substantially amended in order to indicate that the segmentation issue refers to geographical segmentation of a State's coastal zone management program. The requirements for a State to receive approval on a segmented basis are clearly set forth in the amendment to the regulations.

7. Extensive discussions have taken place with various elements of the U.S. Environmental Protection Agency (EPA) concerning the applicability of air and water pollution requirements to the development, approval and implementation of State management programs pursuant to § 923.44 of the proposed regulations. State coastal zone management programs have also been surveyed in order to determine current and anticipated problems, issues and opportunities associated with carrying out the requirements of section 307(f) of the Coastal Zone Management Act, and § 923.44 of the draft approval regulations. Consolidated EPA comments have been received, together with State reviews, and one comment from the private sector. Specific clarifications and changes as a result of these reviews are contained in §§ 923.4, 923.12, 923.32 and § 923.44 of these regulations.

8. One commentator objected to the amount of detail required in section 306 applications and the undue administrative burden proposed pursuant to Sub-

**Title 15—Commerce and Foreign Trade  
CHAPTER IX—NATIONAL OCEANIC AND  
ATMOSPHERIC ADMINISTRATION**

**PART 923—COASTAL ZONE MANAGEMENT PROGRAM APPROVAL REGULATIONS**

The National Oceanic and Atmospheric Administration (NOAA) on August 21, 1974, proposed guidelines (originally published as 15 CFR Part 923), pursuant to the Coastal Zone Management Act of 1972 (Pub. L. 92-583, 86 Stat. 1280), hereinafter referred to as the "Act," for the purpose of defining the procedures by which States can qualify to receive administrative grants under the Act.

Written comments were to be submitted to the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, before November 22, 1974, and consideration has been given these comments.

The Act recognizes that the coastal zone is rich in a variety of natural, commercial, recreational, industrial and esthetic resources of immediate and potential value to the present and future well-being of the nation. Present State and institutional arrangements for planning and regulating land and water uses in the coastal zone are often inadequate to deal with the competing demands and the urgent need to protect natural systems in the ecologically fragile area. Section 305 of the Act authorizes annual grants to any coastal State for the purpose of assisting the State in the development of a management program for the land and water resources of its coastal zone (development grant). Once a coastal State has developed a management program, it is submitted to the Secretary of Commerce for approval and, if approved, the State is then eligible under Section 306 to receive annual grants for administering its management program (administrative grants).

part F of the proposed regulations. The revisions attempt to both clarify and reduce those requirements, while still requiring sufficient information for the Office of Coastal Zone Management to approve management programs and make sound funding decisions.

Accordingly, having considered the comments and other relevant information, the Administrator concludes by adopting the final regulations describing the procedure for application to receive administrative grants under section 306 of the Act, as modified and set forth below.

Effective date: January 8, 1975.

Dated: January 6, 1975.

ROBERT M. WHITE,  
*Administrator, National Oceanic  
and Atmospheric Administra-  
tion.*

#### Subpart A—General

- Sec. 923.1 Purpose.
- 923.2 Definitions.
- 923.3 Submission of management programs.
- 923.4 Evaluation of management programs—general.
- 923.5 Environmental impact assessment.

#### Subpart B—Land and Water Uses

- 923.10 General.
- 923.11 Boundary of the coastal zone.
- 923.12 Permissible land and water uses.
- 923.13 Areas of particular concern.
- 923.14 Guidelines on priorities.
- 923.15 National interest facilities.
- 923.16 Area designation for preservation and restoration.
- 923.17 Local regulations and uses of regional benefit.

#### Subpart C—Authorities and Organization

- 923.20 General.
- 923.21 Means of exerting State control over land and water uses.
- 923.22 Organizational structure to implement the management program.
- 923.23 Designation of a single agency.
- 923.24 Authorities to administer land and water uses, control development and resolve conflicts.
- 923.25 Authorities for property acquisition.
- 923.26 Techniques for control of land and water uses.

#### Subpart D—Coordination

- 923.30 General.
- 923.31 Full participation by relevant bodies in the adoption of management programs.
- 923.32 Consultation and coordination with other planning.

#### Subpart E—Miscellaneous

- 923.40 General.
- 923.41 Public hearings.
- 923.42 gubernatorial review and approval.
- 923.43 Segmentation.
- 923.44 Applicability of air and water pollution control requirements.

#### Subpart F—Applications for Administrative Grants

- 923.50 General.
- 923.51 Administration of the program.
- 923.52 State responsibility.
- 923.53 Allocation.
- 923.54 Geographical segmentation.
- 923.55 Application for the initial administrative grant.
- 923.56 Approval of applications.
- 923.57 Amendments.
- 923.58 Applications for second and subsequent year grants.

AUTHORITY: 86 Stat. 1280 (16 U.S.C. 1451-1464).

#### Subpart A—General

##### § 923.1 Purpose.

(a) This part establishes criteria and procedures to be employed in reviewing and approving coastal zone management programs submitted by coastal States and for the awarding of grants under Section 306 of the Act.

(b) The Act sets forth in sections 305, 306 and 307 a number of specific requirements which a management program must fulfill as a condition for approval by the Secretary. These requirements are linked together as indicated in the subparts which follow. Presentation of the State management program in a similar format is encouraged since it will enable more prompt and systematic review by the Secretary. However, there is no requirement that a State present its management program in the format which corresponds exactly to the listing of categories below. The broad categories are: Land and Water Uses, Subpart B; Authorities and Organization, Subpart C; Coordination, Subpart D; and Miscellaneous, Subpart E. Subpart F, Applications for Administrative Grants, deals with applications for administrative grants upon approval of State coastal zone management programs which will be subject to periodic review by the Secretary in accordance with Section 309 of the Act. In addition to providing criteria against which State coastal zone management programs can be consistently and uniformly judged in the approval process and establishing procedures for the application by States for administrative grants, it is the intent of this part to provide guidance to coastal States in the development of management programs. Therefore, many of the sections dealing with approval requirement in the subparts are followed by a "comment" which refers to a section or sections of the Act and indicates the interpretation placed upon the requirements of the Act or the regulation by the Secretary.

##### § 923.2 Definitions.

In addition to the terms defined in the Act and 15 CFR 920.2, the following terms shall have the meanings indicated below:

"Final approval" means, with respect to a coastal zone management program, approval of a program which terminates the eligibility of the State for grants under Section 305 of the Act and makes the State eligible for grants under Section 306 of the Act. In cases where a State has elected to follow the geographical segmentation option pursuant to § 923.43, final approval will apply only to that specific geographical segment. The State will continue to remain eligible for development grants pursuant to Section 305 of the Act for the remainder of the State's coastal zone.

"Preliminary approval" means, with respect to a coastal zone management program, approval of a program which does not terminate the eligibility of the State for further grants under Section

305 of the Act, and which does not make the State eligible for grants under Section 306 of the Act.

"Use of regional benefit" means a land or water use that typically provides benefits to a significant area beyond the boundaries of a single unit of the lowest level of local, general-purpose government.

##### § 923.3 Submission of management programs.

(a) Upon completion of the development of its management program, a State shall submit the program to the Secretary for review and final approval in accordance with the provisions of these regulations. A program submitted for final approval must comply with all of the provisions set forth in Subparts A-E of this part, including, in particular, Subpart C, which requires that certain authorities and plans of organization be in effect at the time of the submission.

(b) Optionally, the State may submit for the preliminary approval of the Secretary a program complying with the substantive requirements of this part, but for which the proposed authorities and organization complying with the provisions of Subpart C are not yet legally effective. In reviewing a program submitted for preliminary approval, the Secretary may grant such approval subject to establishment of a legal regime providing the authorities and organization called for in the program. If the State elects this option, it shall continue to be eligible for funding under Section 305 but it shall not yet be eligible for funding under Section 306 of the Act until such time as its program is finally approved. Upon a showing by the State that authorities and organization necessary to implement the program which has received preliminary approval are in effect, final approval shall be granted.

*Comment.* The purpose of the optional procedure is to provide a State with an opportunity for Secretarial review of its program before State legislation is enacted to put the program into legal effect. Some States may prefer not to utilize the optional procedure, especially those which have legislative authority enabling the coastal zone agency of the State to put the program into effect by administrative action. In any event, the Office of Coastal Zone Management will be available for consultation during all phases of development of the program.

(c) States completing the requirements set forth in Subpart B—Land and Water Uses, and Subpart D—Coordination, will be deemed to have fulfilled the statutory requirements associated with each criteria. If, however, a State chooses to adopt alternative methods and procedures, which are at least as comprehensive as the procedures set forth below, for fulfilling those statutory requirements contained in Subparts B and D, they may do so upon prior written approval of the Secretary. The States are encouraged to consult with the Office of Coastal Zone Management as early as possible.

*Comment.* The thrust of the Act is to encourage coastal States to exercise their full

authority over the lands and waters in the coastal zone by developing land and water use programs for the zone, including unified policies, criteria, standards, methods and processes for dealing with land and water uses of more than local significance. While the Act mandates a State to meet specific statutory requirements in order for the State to be eligible for administrative grants, it does not require the State to follow specific processes in meeting those requirements. The Secretary will review any State management program that meets the requirements contained in Subparts B and D in addition to the other subparts contained herein.

**§ 923.4 Evaluation of management programs—general.**

(a) In reviewing management programs submitted by a coastal State pursuant to § 923.3, the Secretary will evaluate not only all of the individual program elements required by the Act and set forth in Subparts B-E of this part, but the objectives and policies of the State program as well to assure that they are consistent with national policies declared in Section 303 of the Act.

(b) Each program submitted for approval shall contain a statement of problems and issues, and objectives and policies. The statements shall address:

(1) Major problems and issues, both within and affecting the State's coastal zone;

(2) Objectives to be attained in inter-agency and intergovernmental cooperation, coordination and institutional arrangements; and enhancing management capability involving issues and problem identification, conflict resolution, regulation and administrative efficiency at the State and local level;

(3) Objectives of the program in preservation, protection, development, restoration and enhancement of the State's coastal zone;

(4) Policies for the protection and conservation of coastal zone natural systems, cultural, historic and scenic areas, renewable and non-renewable resources, and the preservation, restoration and economic development of selected coastal zone areas.

(c) The Secretary will review the management program for the adequacy of State procedures utilized in its development and will consider the extent to which its various elements have been integrated into a balanced and comprehensive program designed to achieve the above objectives and policies.

*Comment.* Evaluation of the statutory requirements established in this subpart will concentrate primarily upon the adequacy of State processes in dealing with key coastal problems and issues. It will not, in general, deal with the wisdom of specific land and water use decisions, but rather with a determination that in addressing those problems and issues, the State is aware of the full range of present and potential needs and uses of the coastal zone, and has developed procedures, based upon scientific knowledge, public participation and unified governmental policies, for making reasoned choices and decisions.

Management programs will be evaluated in the light of the Congressional findings and policies as contained in Sections 302 and 303 of the Act. These sections make it clear that

Congress, in enacting the legislation, was concerned about the environmental degradation, damage to natural and scenic areas, loss of living marine resources and wildlife, decreasing open space for public use and shoreline erosion being brought about by population growth and economic development. The Act thus has a strong environmental thrust, stressing the "urgent need to protect and to give high priority to natural systems in the coastal zone." A close working relationship between the agency responsible for the coastal zone management program and the agencies responsible for environmental protection is vital in carrying out this legislative intent. States are encouraged by the Act to take into account ecological, cultural, historic and esthetic values as well as the need for economic development in preparing and implementing management programs through which the States, with the participation of all affected interests and levels of government, exercise their full authority over coastal lands and waters.

Further assistance in meeting the intent of the Act may be found in the Congressional Committee Reports associated with the passage of the legislation (Senate Report 92-753 and House Report 92-1049). It is clear from these reports that Congress intended management programs to be comprehensive and that a State must consider all subject areas which are pertinent to the particular circumstances which prevail in the State. A comprehensive program should have considered at least the following representative elements:

(1) Present laws, regulations, and applicable programs for attainment of air and water quality standards, on land and water uses, and on environmental management by all levels of government;

(2) Present ownership patterns of the land and water resources, including administration of publicly owned properties;

(3) Present populations and future trends, including assessments of the impact of population growth on the coastal zone and estuarine environments;

(4) Present uses, known proposals for changes and long-term requirements of the coastal zone;

(5) Energy generation and transmission;

(6) Estuarine habitats of fish, shellfish and wildlife;

(7) Industrial needs;

(8) Housing requirements;

(9) Recreation, including beaches, parks, wildlife preserves, sport fishing, swimming and pleasure boating;

(10) Open space, including educational and natural preserves, scenic beauty, and public access, both visual and physical, to coastlines and coastal estuarine areas;

(11) Mineral resources requirements;

(12) Transportation and navigation needs;

(13) Floods and flood damage prevention, erosion (including the effect of tides and currents upon beaches and other shoreline areas), land stability, climatology and meteorology;

(14) Communication facilities;

(15) Commercial fishing; and

(16) Requirements for protecting water quality and other important natural resources.

The list of considerations is not meant to be exclusive, nor does it mean that each consideration must be given equal weight. State initiative to determine other relevant factors and consider them in the program is essential to the management of the coastal zone as envisioned by Congress.

In assessing programs submitted for approval, the Secretary, in consultation with other concerned Federal agencies, will examine such programs to determine that the full range of public problems and issues affecting the coastal zone have been identified

and considered. In this connection, developments outside the coastal zone may often have a significant impact within the coastal zone and create a range of public problems and issues which must be dealt with in the coastal zone management program.

The Secretary encourages the States to develop objectives toward which progress can be measured and will review program submissions in this light. While it is recognized that many essential coastal zone management objectives are not quantifiable (e.g. public aspirations, "quality of life"), others are, and should be set forth in measurable terms where feasible (e.g. shore erosion, beach access, recreational demand, energy facility requirements). Identifying and analyzing problems and issues in measurable terms during the program development phase will facilitate the formulation of measurable objectives as part of the approval submission.

**§ 923.5 Environmental impact assessment.**

Individual environmental impact statements will be prepared and circulated by NOAA as an integral part of the review and approval process for State coastal zone management programs pursuant to the National Environmental Policy Act (Pub. L. 91-190, 42 USC 4321 et seq) and its implementing regulations. The Administrator of NOAA will circulate an environmental impact statement prepared primarily on the basis of an environmental impact assessment and other relevant data submitted by the individual applicant States.

**Subpart B—Land and Water Uses**

**§ 923.10 General.**

(a) This subpart deals with land and water uses in the coastal zone which are subject to the management program.

(b) In order to provide a relatively simple framework upon which discussion of the specific requirements associated with this subpart may proceed, it may be helpful to categorize the various types of land and water uses which the Act envisions.

(1) The statutory definition of the landward portion of the coastal zone states that it "extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters." Thus, the coastal zone will include those lands and only those lands where any existing, projected or potential use will have a "direct and significant impact on the coastal waters." Any such use will be subject to the terms of the management program, pursuant to Section 305(b) (2).

(2) There may well be uses of certain lands included within the coastal zone which will not have such "direct and significant impact." Such uses may be subject to regulation by local units of government within the framework of the management program.

(3) The Act also requires that management programs contain a method of assuring that "local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit." This requirement is described more fully in § 923.17.

(c) As part of the State's management program, it must address and exercise authority over the following:

(1) *Land and water uses which have a direct and significant impact upon coastal waters.* These uses are described more fully in § 923.12.

(2) *Areas of particular concern.* Section 305(b)(3) specifies that the management program include an inventory and designation of areas of particular concern within the coastal zone. Section 923.13 deals more thoroughly with this statutory requirement. Such areas must be considered of Statewide concern and must be addressed in the management program.

(3) *Siting of facilities necessary to meet requirements which are other than local in nature.* The management program must take "adequate consideration of the national interest involved in the siting of facilities necessary to meet requirements which are other than local in nature" (Section 306(c)(8)). This requirement is more fully discussed in § 923.15.

#### § 923.11 Boundaries of the coastal zone.

(a) *Requirement.* In order to fulfill the requirement contained in Section 305(b)(1), the management program must show evidence that the State has developed and applied a procedure for identifying the boundary of the State's coastal zone meeting the statutory definition of the coastal zone contained in Section 304(a). At a minimum this procedure should result in:

(1) A determination of the inland boundary required to control, through the management program, shorelands the uses of which have direct and significant impacts upon coastal waters,

(2) A determination of the extent of the territorial sea, or where applicable, of State waters in the Great Lakes,

(3) An identification of transitional and intertidal areas, salt marshes, wetlands and beaches,

(4) An identification of all Federally owned lands, or lands which are held in trust by the Federal government, its officers and agents in the coastal zone and over which a State does not exercise any control as to use.

(b) *Comment.* Statutory citation: Section 305(b)(1):

Such management program shall include . . . an identification of the boundaries of the coastal zone subject to the management programs.

Useful background information concerning this requirement appears in Part 920.11, which is incorporated into this part by reference.

(1) The key to successful completion of this requirement lies in the development and use of a procedure designed to identify the landward extent of the coastal zone. Included in this procedure must be a method for determining those "shorelands, the uses of which have a direct and significant impact upon the coastal waters." These uses shall be considered the same as the "land and water uses" described in § 923.12, reflecting the requirements of Section 305(b)(2) of

the Act regardless of whether those uses are found, upon analysis, to be "permissible." The coastal zone must include within it those lands which have any existing, projected or potential uses which have a direct and significant impact upon the coastal waters and over which the terms of the management program will be exercised. In some States, existing regulations controlling shoreland uses apply only in a strip of land of uniform depth (e.g. 250 feet, 1,000 yards, etc.) behind the shoreline. Such a boundary will be acceptable if it approximates a boundary developed according to the procedure outlined above and extends inland sufficiently for the management program to control lands the uses of which have a direct and significant impact upon coastal waters. States may wish, for administrative convenience, to designate political boundaries, cultural features, property lines or existing designated planning and environmental control areas, as boundaries of the coastal zone. While the Secretary will take into account the desirability of identifying a coastal zone which is easily regulated as a whole, the selection of the boundaries of the coastal zone must bear a reasonable relationship to the statutory requirement. Nothing in this part shall preclude a State from exercising the terms of the management program in a landward area more extensive than the coastal zone called for in this part. If such a course is selected, the boundaries of the coastal zone must nevertheless be identified as above and the provisions of the Act will be exercised only in the defined coastal zone. It should be borne in mind that the boundary should include lands and waters which are subject to the management program. This means that the policies, objectives and controls called for in the management program must be capable of being applied consistently within the area. The area must not be so extensive that a fair application of the management program becomes difficult or capricious, nor so limited that lands strongly influenced by coastal waters and over which the management program should reasonably apply, are excluded.

(2) Inasmuch as the seaward boundary of the coastal zone is established in the Act, the States will be required to utilize the statutory boundary, i.e. in the Great Lakes, the international boundary between the United States and Canada, and elsewhere the outer limits of the United States territorial sea. At present, this limit is three nautical miles from the appropriate baselines recognized by international law and defined precisely by the United States. In the event of a statutory change in the boundary of the territorial sea, the question of whether a corresponding change in coastal zone boundaries must be made, or will be made by operation of law, will depend on the specific terms of the statutory change and cannot be resolved in advance. In the waters of Lake Michigan, the boundary shall extend to the recognized boundaries with adjacent States.

(3) A State's coastal zone must include transitional and intertidal areas, salt marshes, wetlands and beaches. Hence the boundary determination procedure must include a method of identifying such coastal features. In no case, however, will a State's landward coastal zone boundary include only such areas in the absence of application of the procedure called for herein or in § 923.43.

(4) Since the coastal zone excludes lands the use of which is by law subject solely to the discretion of, or which is held in trust by the Federal government, its officers and agents, the coastal zone boundary must identify such lands which are excluded from the coastal zone. In order to complete this requirement, the State should indicate those Federally owned lands, or lands held in trust by the Federal government, and over which the State does not exercise jurisdiction as to use. In the event that a State fails to identify lands held by an agency of the Federal government as excluded lands, and the agency, after review of the program under Section 307(b), is of the opinion that such lands should be excluded, the disagreement will be subject to the mediation process set forth in said section.

#### § 923.12 Permissible land and water uses.

(a) *Requirement.* In order to fulfill the requirements contained in Section 305(b)(2), the management must show evidence that the State has developed and applied a procedure for defining "permissible land and water uses within the coastal zone which have a direct and significant impact upon the coastal waters," which includes, at a minimum:

(1) a method for relating various specific land and water uses to impact upon coastal waters, including utilization of an operational definition of "direct and significant impact,"

(2) an inventory of natural and managed coastal resources,

(3) an analysis or establishment of a method for analysis of the capability and suitability for each type of resource and application to existing, projected or potential uses.

(4) an analysis or establishment of a method for analysis of the environmental impact of reasonable resource utilizations.

(b) *Comment.* Statutory citation: Section 305(b)(2):

Such management program shall include . . . a definition of what shall constitute permissible land and water uses within the coastal zone which have a direct and significant impact upon the coastal waters.

Useful background information concerning this requirement appears in 15 CFR 920.12, which is incorporated into this part by reference. Completion of this requirement should be divided into two distinct elements: a determination of those land and water uses having a direct and significant impact upon coastal waters, and an identification of such uses which the State deems permissible.

(1) *Section 305(b)(4).* In identifying those uses which have a "direct and sig-

nificant impact," the State should define that phrase in operational terms that can be applied uniformly and consistently, and should develop a method for relating various uses to impacts upon coastal waters. Existing, projected and potential uses should be analyzed as to the level and extent of their impact, be it adverse, benign or beneficial, intrastate or interstate. These impacts should then be assessed to determine whether they meet the definition of "direct and significant impact upon coastal waters." (These are the ones by which the boundaries of the coastal zone are defined.) Those uses meeting that definition are automatically subject to control by the management program.

(2) In determining which land and water uses may be deemed permissible, a State should develop a method for assuring that such decisions are made in an objective manner, based upon evaluation of the best available information concerning land and water capability and suitability. This method should include at a minimum:

(i) An inventory of significant natural and man-made coastal resources, including but not limited to, shorelands, beaches, dunes, wetlands, uplands, barrier islands, waters, bays, estuaries, harbors and their associated facilities. This should not be construed as requiring long-term, continuing research and baseline studies, but rather as providing the basic information and data critical to successful completion of a number of required management program elements. States are encouraged, however, to continue research and studies as necessary to detect early warnings of changes to coastal zone resources. It is recognized that in some States a complete and detailed inventory of such resources may be expensive and time consuming in relation to the value of information gathered in the development of the management program. Much information, of course, already exists and should be integrated into the inventory. The Secretary, in reviewing this particular requirement, will take into account the nature and extent of the State's coastline, the funding available and existing data sources.

(ii) An analysis or establishment of a method for analysis of the capabilities of each resource for supporting various types of uses (including the capability for sustained and undiminished yield of renewable resources), as well as of the suitability for such resource utilization when evaluated in conjunction with other local, regional and State resources and uses. Resource capability analysis should include physical, biological and chemical parameters as necessary.

(iii) An analysis or establishment of a method for analysis of the impact of various resource uses upon the natural environment (air, land and water). Based upon these analyses and applicable Federal, State and local policies and standards, the State should define permissible uses as those which can be reasonably and safely supported by the resource, which are compatible with

surrounding resource utilization and which will have a tolerable impact upon the environment. These analyses, in part, will be provided through existing information on environmental protection programs, and should be supplemented to the extent necessary for determining the relationship between land uses and environmental quality. Where a State prohibits a use within the coastal zone, or a portion thereof, it should identify the reasons for the prohibition, citing evidence developed in the above analyses. It should be pointed out that uses which may have a direct and significant impact on coastal waters when conducted close to the shoreline may not have a direct and significant impact when conducted further inland. Similarly, uses which may be permissible in a highly industrialized area may not be permissible in a pristine marshland. Accordingly, the definition may also be correlated with the nature (including current uses) and location of the land on which the use is to take place. The analyses which the State will undertake pursuant to this section should also be useful in satisfying the requirements of § 923.13 through § 923.17.

#### § 923.13 Areas of particular concern.

(a) *Requirement.* In order to fulfill the requirements contained in Section 305 (b) (3), the management program must show evidence that the State has made an inventory and designation of areas of particular concern within the coastal zone. Such designations shall be based upon a review of natural and man-made coastal zone resources and uses, and upon consideration of State-established criteria which include, at a minimum, those factors contained in 15 CFR 920.13, namely:

(1) Areas of unique, scarce, fragile or vulnerable natural habitat, physical feature, historical significance, cultural value and scenic importance;

(2) Areas of high natural productivity or essential habitat for living resources, including fish, wildlife and the various trophic levels in the food web critical to their well-being;

(3) Areas of substantial recreational value and/or opportunity;

(4) Areas where developments and facilities are dependent upon the utilization of, or access to, coastal waters;

(5) Areas of unique geologic or topographic significance to industrial or commercial development;

(6) Areas of urban concentration where shoreline utilization and water uses are highly competitive;

(7) Areas of significant hazard if developed, due to storms, slides, floods, erosion, settlement, etc.; and

(8) Areas needed to protect, maintain or replenish coastal lands or resources, including coastal flood plains, aquifer recharge areas, sand dunes, coral and other reefs, beaches, offshore sand deposits and mangrove stands.

(b) *Comment.* Statutory citation: Section 305(b) (3).

Such management program shall include . . . an inventory and designation of areas of particular concern within the coastal zone.

Useful background information concerning the requirement appears in 15 CFR 920.13, which is incorporated here by reference. It should be emphasized that the basic purpose of inventorying and designating areas of particular concern within the coastal zone is to express some measure of Statewide concern about them and to include them within the purview of the management program. Therefore, particular attention in reviewing the management program will be directed toward development by the State of implementing policies or actions to manage the designated areas of particular concern.

#### § 923.14 Guidelines on priority of uses.

(a) *Requirement.* The management program shall include broad policies or guidelines governing the relative priorities which will be accorded in particular areas to at least those permissible land and water uses identified pursuant to § 923.12. The priorities will be based upon an analysis of State and local needs as well as the effect of the uses on the area. Uses of lowest priority will be specifically stated for each type of area.

(b) *Comment.* Statutory citation: Section 305(b) (5).

Such management program shall include . . . broad guidelines on priority of uses in particular areas, including specifically those uses of lowest priority.

As pointed out in 15 CFR 920.15, the priority guidelines will set forth the degree of State interest in the preservation, conservation and orderly development of specific areas including at least those areas of particular concern identified in § 923.13 within the coastal zone, and thus provide the basis for regulating land and water uses in the coastal zone, as well as a common reference point for resolving conflicts. Such priority guidelines will be the core of a successful management program since they will provide a framework within which the State, its agencies, local governments and regional bodies can deal with specific proposals for development activities in various areas of the coastal zone. In order to develop such broad guidelines, the management program shall indicate that a method has been developed and applied for (1) analyzing State needs which can be met most effectively and efficiently through land and water uses in the coastal zone, and (2) determining the capability and suitability of meeting these needs in specific locations in the coastal zone. In analyzing the States' needs, there should be a determination made of those requirements and uses which have Statewide, as opposed to local, significance. Section 302(h) of the Act states in part that land and water use programs for the coastal zone should include "unified policies, criteria, standards, methods and processes for dealing with land and water use decisions of more than local significance." The inventory and analyses of coastal resources and uses called for in § 923.12 will provide the State with most of the basic data needed to determine the specific locations where coastal resources are capable and suitable for meeting State-



wide needs. In addition, these analyses should permit the State to determine possible constraints on development which may be applied by particular uses. The program should establish special procedures for evaluating land use decisions, such as the siting of regional energy facilities, which may have a substantial impact on the environment. In such cases, the program should make provision for the consideration of available alternative sites which will serve the need with a minimum adverse impact. The identifying and ordering of use priorities in specific coastal areas should lead to the development and adoption of State policies or guidelines on land and water use in the coastal zone. Such policies or guidelines should be part of the management program as submitted by the State and should be consistent with the State's specified management program objectives. Particular attention should be given by the State to applying these guidelines on use priorities within those "areas of particular concern" designated pursuant to § 923.13. In addition, States shall indicate within the management program uses of lowest priority in particular areas, including guidelines associated with such uses.

**§ 923.15 National interest in the siting of facilities.**

(a) *Requirement.* A management program which integrates (through development of a body of information relating to the national interest involved in such siting through consultation with cognizant Federal and regional bodies, as well as adjacent and nearby States) the siting of facilities meeting requirements which are of greater than local concern into the determination of uses and areas of Statewide concern, will meet the requirements of Section 306(c) (8).

(b) *Comment.* Statutory citation: Section 306(c) (8):

Prior to granting approval of a management program submitted by a coastal State, the Secretary shall find that . . . the management program provides for adequate consideration of the national interest involved in the siting of facilities necessary to meet requirements which are other than local in nature.

This policy requirement is intended to assure that national concerns over facility siting are expressed and dealt with in the development and implementation of State coastal zone management programs. The requirement should not be construed as compelling the States to propose a program which accommodates certain types of facilities, but to assure that such national concerns are included at an early stage in the State's planning activities and that such facilities not be arbitrarily excluded or unreasonably restricted in the management program without good and sufficient reasons. It is recognized that there may or may not be a national interest associated with the siting of facilities necessary to meet requirements which are other than local in nature. Requirements which are other than local in nature shall be considered those requirements which, when fulfilled, result in the establishment of facilities designed clearly to serve more

than one locality (generally, the lowest unit of local, general-purpose government, excluding situations such as with cities and counties which exercise concurrent jurisdiction for the same geographic areas). In order to provide assistance to the States in completing this requirement, a listing is presented below which identifies those requirements which are both (1) other than local in nature, and (2) possess siting characteristics in which, in the opinion of the Secretary, there may be a clear national interest. For each such need, there is a listing of associated facilities. In addition, the principal cognizant Federal agencies concerned with these facilities are also listed. This list must not be considered inclusive, but the State should consider each requirement and facility type in the development of its management program. Consideration of these requirements and facilities need not be seen as a separate and distinct element of the management program, and the listing is provided to assure that the siting of such facilities is not overlooked or ignored. As part of its determination of permissible uses in the coastal zone (§ 923.12), as well as of priority of uses (§ 923.14), the State will have developed a procedure for inventorying coastal resources and identifying their existing or potential utilization for various purposes based upon capability, suitability and impact analyses. The process for responding to the requirements of Section 306(c) (8) should be identical to, and part of, the same procedure. No separate national interest "test" need be applied and submitted other than evidence that the listed national interest facilities have been considered in a manner similar to all other uses, and that appropriate consultation with the Federal agencies listed has been conducted. As a preliminary to adequate consideration of the national interest, the State must determine the needs for such facilities. Management programs must recognize the need of local as well as regional and national populations for goods and services which

can be supplied only through the use of facilities in the coastal zone in order to make reasonable provision for such facilities in light of the size and population of the State, the length and characteristics of its coast and the contribution such State is already making to regional and national needs. This will require the State to enter into discussions with appropriate Federal agencies and agencies of other States in the region, a process which should begin early in the development of the management program so that the full dimensions of the national interest may be considered as the State develops its program (§ 923.31 and § 923.32). The management program should make reference to the views of cognizant Federal agencies as to how these national needs may be met in the coastal zone of that particular State. States should actively seek such guidance from these Federal agencies, particularly in view of the fact that all management programs will be reviewed with the opportunity for full comment by all affected Federal agencies prior to approval. It is recognized that Federal agencies will differ markedly in their abilities to articulate policies regarding utilization of individual State's coastal zones. NOAA's Office of Coastal Zone Management will encourage Federal agencies to develop policy statements regarding their perception of the national interest in the coastal zone and make these available to the States. The States should also consult with adjacent and nearby States which share similar or common coastal resources or with regional interstate bodies to determine how regional needs may be met in siting facilities. Specific arrangements of "trade-offs" of coastal resource utilization should be documented with appropriate supporting evidence. The importance of this type of interstate consultation and cooperation in planning cannot be over-emphasized for it offers the States the opportunity of resolving significant national problems on a regional scale without Federal intervention.

*Requirements which are other than local in nature and in the siting of which there may be a clear national interest (with associated facilities and cognizant Federal agencies)*

Requirements	Associated facilities	Cognizant Federal Agencies
1. Energy production and transmission.	Oil and gas wells; storage and distribution facilities; refineries; nuclear, conventional, and hydroelectric powerplants; deepwater ports.	Federal Energy Administration, Federal Power Commission, Bureau of Land Management, Atomic Energy Commission, Maritime Administration, Geological Survey, Department of Transportation, Corps of Engineers.
2. Recreation (of an interstate nature) . .	National seashores, parks, forests; large and outstanding beaches and recreational waterfronts; wildlife reserves.	National Park Service, Forest Service, Bureau of Outdoor Recreation.
3. Interstate transportation . . . . .	Interstate highways, airports, aids to navigation; ports and harbors, railroads.	Federal Highway Administration, Federal Aviation Administration, Coast Guard, Corps of Engineers, Maritime Administration, Interstate Commerce Commission.
4. Production of food and fiber . . . . .	Prime agricultural land and facilities; forests; mariculture facilities; fisheries.	Soil Conservation Service, Forest Service, Fish and Wildlife Service, National Marine Fisheries Service.
5. Preservation of life and property . . . .	Flood and storm protection facilities; disaster warning facilities.	Corps of Engineers, Federal Insurance Administration, NOAA, Soil Conservation Service.
6. National defense and aerospace . . . . .	Military installations; defense manufacturing facilities; aerospace launching and tracking facilities.	Department of Defense, NASA.
7. Historic, cultural, esthetic and conservation values.	Historic sites; natural areas; areas of unique cultural significance; wildlife refuges; areas of species and habitat preservation.	National Register of Historic Places, National Park Service, Fish and Wildlife Service, National Marine Fisheries Service.
8. Mineral resources . . . . .	Mineral extraction facilities needed to directly support activity.	Bureau of Mines, Geological Survey.

**§ 923.16 Area designation for preservation and restoration.**

(a) *Requirement.* In order to fulfill the requirement contained in Section 306(c) (9), the management program must show evidence that the State has developed and applied standards and criteria for the designation of areas of conservation, recreational, ecological or esthetic values for the purpose of preserving and restoring them.

(b) *Comment.* Statutory citation: Section 306(c) (9):

Prior to granting approval of a management program submitted by a coastal State, the Secretary shall find that . . . the management program makes provision for procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreation, ecological or esthetic values.

(1) This requirement is closely linked to that contained in § 923.13, dealing with designation of areas of particular concern. Unless the State can make a compelling case to the contrary, all areas designated according to the methods called for in this part shall also be considered as areas of particular concern.

(2) This requirement is reasonably self-explanatory. The State must develop procedures for the designation of areas with certain characteristics. The State, in doing so, must:

(i) Establish standards and criteria for the possible designation of coastal areas intended for preservation or restoration because of their conservation, recreational, ecological or esthetic values, and

(ii) Apply those standards and criteria to the State's coastal resources. (In this, the inventory associated with the requirement of § 923.13 will be most helpful.)

(3) The requirement of the statute goes to the procedures rather than substance; the fact that a State may be unable to move rapidly ahead with a program of preservation or restoration will not prevent the program from being approved. The State should also rank in order of relative priority areas of its coastal zone which have been designated for the purposes set forth in this section. As funds become available, such a ranking will provide a set of priorities for selecting areas to be preserved or restored.

**§ 923.17 Local regulations and uses of regional benefit.**

(a) *Requirement.* In order to fulfill the requirement contained in Section 306(e) (2), the management program must show evidence that the State has developed and applied a method for determining uses of regional benefit, and that it has established a method for assuring that local land and water use controls in the coastal zone do not unreasonably or arbitrarily restrict or exclude those uses of regional benefit.

(b) *Comment.* Statutory citation: Section 306(e) (2):

Prior to granting approval, the Secretary shall also find that the program provides . . . for a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or

exclude land and water uses of regional benefit.

This requirement is intended to prevent local land and water use decisions from arbitrarily excluding certain land and water uses which are deemed of importance to more than a single unit of local government. For the purposes of this requirement, a use of regional benefit will be one which provides services or other benefits to citizens of more than one unit of local, general-purpose government (excluding situations such as in cities and counties which exercise jurisdiction over the same geographic areas). In order to assure that arbitrary exclusion does not occur, the State must first identify those uses which it perceives will affect or produce some regional benefit. This designation would normally be derived from the inventory and analysis of the uses contained in § 923.12. In any event, however, these uses should include those contained in the table of § 923.15. In addition, the State may determine that certain land and water uses may be of regional benefit under certain sets of circumstances; the State should then establish standards and criteria for determining when such conditions exist. There should be no blanket exclusion or restrictions of these uses in areas of the coastal zone by local regulation unless it can be shown that the exclusion or restriction is based upon reasonable considerations of the suitability of the area for the uses or the carrying capacity of the area. The requirement of this section does not exclude the possibility that in specific areas certain uses of regional benefit may be prohibited. However, such exclusions may not be capricious. The method by which the management program will assure that such unreasonable restrictions or exclusion not occur in local land and water use decisions will, of course, be up to the State, but it should include the preparation of standards and criteria relating to State interpretation of "unreasonable restriction or exclusion", as well as the establishment of a continuing mechanisms for such determination.

**Subpart C—Authorities and Organization**

**§ 923.20 General.**

This subpart deals with requirements that the State possess necessary authorities to control land and water uses and that it be organized to implement the management. It should be emphasized that before final approval of a coastal zone management program can be given by the Secretary of Commerce, the authorities and organizational structure called for in the management program must be in place. Preliminary approval, however, can be given to a proposal which will require subsequent legislative or executive action for implementation and eligibility for administrative grants under Section 308.

**§ 923.21 Means of exerting State control over land and water uses.**

(a) *Requirement.* In order to fulfill the requirements contained in Sections 305(b) (4) and 306(c) (7), the management program must show evidence that

the State has identified a means for controlling each permissible land and water use specified in § 923.12, and for precluding land and water uses in the coastal zone which are not permissible. The management program should contain a list of relevant constitutional provisions, legislative enactments, regulations, judicial decisions and other appropriate official documents or actions which establish the legal basis for such controls, as well as documentation by the Governor or his designated legal officer that the State actually has and is prepared to implement the authorities, including those contained in Section 306(d), required to implement the objectives, policies and individual components of the program.

(b) *Comment.* Statutory citation: Section 305(b) (4):

Such management program shall include . . . an identification of the means by which the State proposes to exert control over the land and water uses referred to in paragraph (2) of this subsection, including a listing of relevant constitutional provisions, legislative enactments, regulations and judicial decisions:

Statutory citation: Section 306(c) (7):

Prior to granting approval of a management program submitted by a coastal State, the Secretary shall find that . . . the State has the authorities necessary to implement the program, including the authority required under subsection (d) of this section.

Useful information concerning this requirement appears in 15 CFR 920.14, which is incorporated into this part by reference. The key words in this requirement are, "to exert control over the land and water uses." This reflects the Congressional finding that the "key to more effective protection and use of the land and water resources of the coastal zone is to encourage the States to exercise their full authority over the lands and waters in the coastal zone . . ." It is not the intent of this part to specify for the States the "means" of control; this is a State responsibility. The State must, however, describe in the management program its rationale for developing and deciding upon such "means." The "means" must be capable of actually implementing the objectives, policies and individual components of the management program. As such, requirements shall be reviewed in close conjunction with § 923.24, 923.25 and § 923.26, relating to actual authorities which the State must possess. The management program should also indicate those specific land and water uses over which authority, jurisdiction or control will be exercised concurrently by both State and Federal agencies, particularly those uses affecting water resources, submerged lands and navigable waters. The management program must provide for control of land and water uses in the coastal zone, although the exercise of control may be vested in, or delegated to, various agencies or local government. As part of the approval of a management program, the Secretary must find that the means for controlling land and water uses identified in § 923.21 are established and in place, and that the means include the

authorities contained in § 923.24 and § 923.25. This finding will be based upon documentation by the Governor of the coastal State or his designated legal officer that the State possesses and is prepared to implement the requisite authorities.

**§ 923.22 Organizational structure to implement the management program.**

(a) *Requirement.* In order to fulfill the requirement contained in Section 305(b) (6), the management program must contain a description of how the State is organized to implement the authorities identified in § 923.21. In addition, the management program must contain a certification by the Governor of the State or his designated legal officer that the State has established its organizational structure to implement the management program.

(b) *Comment.* Statutory citation: Section 305(b) (6):

Such management program shall include . . . a description of the organizational structure proposed to implement the management program, including the responsibilities and interrelationships of local, area-wide, State, regional and interstate agencies in the management process.

Statutory citation: Section 306(c) (6):

Prior to granting approval of a management program submitted by a coastal State, the Secretary shall find that . . . the State is organized to implement the management program required under paragraph (1) of this subsection.

Useful background information and guidance concerning this requirement appears in 15 CFR 920.16, which is incorporated into this part by reference. The legislative history of the Act makes it clear that the States should be accorded maximum flexibility in organizing for implementation of their coastal zone management programs. Thus, neither the Act nor this part provide an organizational model which must be followed. While individual State programs may have a wide range of interstate, State, local or areawide agency roles to play, the program will be reviewed closely for assurance that it constitutes an organized and unified program. Consistent with this principle, there must be a clear point of responsibility for the program, although program implementation may be undertaken by several State entities. In those cases, where a complex inter-agency and intergovernmental process is established, the State must submit a description of roles and responsibilities of each of the participants and how such roles and responsibilities contribute to a unified coastal zone management program. This description should be sufficiently detailed to demonstrate that a coherent program structure has been proposed by the State and the State is prepared to act in accordance with the objectives of the management program. Although the Act does not prescribe the creation of a central management agency at the State level, it envisions the creation of a coastal zone management entity that has adequate legislative and/or executive authority to implement the policies and requirements mandated in

the Act. Review of the management program for compliance with this requirement will be undertaken as a single review with review of the requirements contained in § 923.31, full participation by interested bodies in adoption of management programs, and § 923.23, designation of a single State agency.

**§ 923.23 Designation of a single agency.**

(a) *Requirement.* In order to fulfill the requirement of Section 306(c) (5), the management program must contain appropriate documentation that the Governor of the coastal State has designated a single agency to be responsible for receiving and administering grants under Section 306 for implementing an approved management program.

(b) *Comment.* Statutory citation: Section 306(c) (5):

Prior to granting approval of a management program submitted by a coastal State, the Secretary shall find that . . . the Governor of the State has designated a single agency to receive and administer the grants for implementing the management program required under paragraph (1) of this subsection.

This requirement is closely related to that contained in § 923.22, relating to a description of the organizational structure which will implement the management program. While this requirement is self-explanatory, it should be pointed out that States will undoubtedly come forward with a wide variety of organizational structures to implement approved management programs. Some will probably be quite complex, utilizing a variety of control techniques at a number of governmental levels. Nothing in this part should be construed as limiting the options available to a State for implementing its program. The purpose of the requirement is simply to identify a single agency which will be fiscally and programmatically responsible for receiving and administering the grants under Section 306 to implement the approved management program.

**§ 923.24 Authorities to administer land and water uses, control development and resolve conflicts.**

(a) *Requirement.* (1) The management program must contain documentation by the Governor or his designated legal officer that the agencies and governments chosen by the State to administer the management program have the authority to administer land and water regulations, control development in accordance with the management program and to resolve use conflicts.

(b) *Comment.* Statutory citation: Section 306(d) (1):

Prior to granting approval of the management program, the Secretary shall find that the State, acting through its chosen agency or agencies, including local governments, areawide agencies designated under Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, regional agencies, or interstate agencies, has authority for the management of the coastal zone in accordance with the management program. Such authority shall include power . . . to administer land and water use regulations, control development in order to ensure compliance with the management program

and to resolve conflicts among competing uses . . .

This requirement shall be reviewed in close conjunction with that of §§ 923.21, 923.25 and § 923.26, dealing with authorities which the State's organizational structure must possess in order to ensure implementation of the management program. The language of this requirement makes it clear that the State may choose to administer its program using a variety of levels of governments and agencies, but that if it does, the State must have available to it the authorities specified.

**§ 923.25 Authorities for property acquisition.**

(a) *Requirement.* The management program shall contain documentation by the Governor or his designated legal officer that the agency or agencies, including local governments, areawide agencies, regional or interstate agencies, responsible for implementation of the management program have available the power to acquire fee simple and less than fee simple interests in lands, waters and other property through condemnation or other means where necessary to achieve conformance with the management program. Where the power includes condemnation, the State shall so indicate. Where the power includes other means, the State shall specifically identify such means.

(b) *Comment.* Statutory citation: Section 306(d) (2):

Prior to granting approval of the management program, the Secretary shall find that the State, acting through its chosen agency or agencies, including local governments, areawide agencies designated under Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, regional agencies or interstate agencies, has authority for the management of the coastal zone in accordance with the management program. Such authority shall include power . . . to acquire fee simple and less than fee simple interests in lands, waters and other property through condemnation or other means when necessary to achieve conformance with the management program . . .

In most cases, it will not be necessary to acquire fee simple ownership. Normally, appropriate use restrictions will be adequate to achieve conformance with the program. In other cases, an easement may be necessary to achieve conformance with the management program. Where acquisition is necessary, this section contemplates acquisition by condemnation or through other means. However, the mere authority to acquire an interest in lands or waters by purchase from a willing vendor will not be sufficient in cases where the acquisition of interests in real property is a necessary and integral part of the program. In such cases, the power of condemnation need be no broader than necessary to achieve conformance with the program. For example, if a State's program includes provisions expressly requiring that power transmission lines and pipelines be located in specified energy and transportation corridors to minimize environmental impact, and for State ac-

quisition of such transportation corridors, then the State should have the power to acquire corridors for such purposes through condemnation. It is not necessary that the power to acquire real property be held by any one particular agency involved in implementing the management program. The authority must, however, be held by one or more agencies or local governments with a statutory responsibility to exercise the authority without undue delay when necessary to achieve conformance with the management program.

**§ 923.26 Techniques for control of land and water uses.**

(a) *Requirement.* The management program must contain documentation by the Governor or his designated legal officer that all existing, projected and potential land and water uses within the coastal zone may be controlled by any one or a combination of the techniques specified in Section 306(e) (1).

(b) *Comment.* Statutory citation: Section 306(e) (1):

Prior to granting approval, the Secretary shall also find that the program provides . . . for any one or a combination of the following general techniques for control of land and water uses within the coastal zone:

(1) Section 306(e) (1) (A) "State establishment of criteria and standards for local implementation, subject to administrative review and enforcement of compliance." This option requires the State to establish general criteria and standards within the framework of the coastal zone program for implementation by local government. Such criteria and standards would provide for application of criteria and standards to specific local conditions. Implementation by a local unit of government would consist of adoption of a suitable local zoning ordinance or regulation, and enforcement on a continuing basis. Administrative review at the State level requires provision for review of local ordinances and regulations and local enforcement activity for consistency with the criteria and standards as well as programs, not review of specific cases on the merits. In the event of deficiencies either in regulation or local enforcement, State enforcement of compliance would require either appropriate changes in local regulation or enforcement or direct State intervention.

(2) Section 306(e) (1) (B) "Direct State land and water use planning and regulation." Under this option the State would become directly involved in the establishment of detailed land and water use regulations and would apply these regulations to individual cases. Initial determinations regarding land and water use in the coastal zone would be made at the State level. This option preempts the traditional role of local government in the zoning process involving lands or waters within the coastal zone.

(3) Section 306(e) (1) (C) "State administrative review for consistency with the management program of all develop-

ment plans, projects, or land and water regulations, including exceptions and variances thereto proposed by any State or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings." This option leaves the local unit of government free to adopt zoning ordinances or regulations without State criteria and standards other than the program itself, but subjects certain actions by the local unit of government to automatic State review, including public notice and a hearing when requested by a party. Such actions include:

(i) Adoption of land and water use regulations, ordinarily in the form of a zoning ordinance or regulation.

(ii) Granting of an exception or variance to a zoning ordinance or regulation.

(iii) Approval of a development plan or project proposed by a private developer. This may be defined to exclude approval of minor projects, such as small residences or commercial establishments, or those which do not have a significant impact.

(4) It should be noted that State review is for consistency with the management program, not of the merits or of the facts on which the local decision is based.

(5) The State may choose to utilize only one of the specified techniques, or more than one, or a combination of them in different locations or at different times. Within the parameters set forth in the requirement, there is a large variety of tools which the management program could adopt for controlling land and water uses. The program should identify the techniques for control of land and water uses which it intends to use for existing, projected and potential uses within the coastal zone. This requirement will be reviewed in close conjunction with those contained in §§ 923.21, 923.24 and 923.25, dealing with State authorities to implement the management program.

**Subpart D—Coordination**

**§ 923.30 General.**

One of the most critical aspects of the development of State coastal zone management programs will be the ability of the States to deal fully with the network of public, quasi-public and private bodies which can assist in the development process and which may be significantly impacted by the implementation of the program. Each State will have to develop its own methods for accommodating, as appropriate, the varying, often conflicting interests of local governments, water and air pollution control agencies, regional agencies, other State agencies and bodies, interstate organizations, commissions and compacts, the Federal government and interested private bodies. It is the intent of these requirements for coordination with governmental and private bodies to assure that the State, in developing its management program, is aware of the full array of interests represented by such organizations, that opportunity for participation was provided, and that adequate con-

sultation and cooperation with such bodies has taken place and will continue in the future.

**§ 923.31 Full participation by relevant bodies in the adoption of management programs.**

(a) *Requirement.* In order to fulfill the requirement contained in section 306(c) (1), the management program must show evidence that:

(1) The management program has been formally adopted in accordance with State law or, in its absence, administrative regulations;

(2) The State has notified and provided an opportunity for full participation in the development of its management program to all public and private agencies and organizations which are liable to be affected by, or may have a direct interest in, the management program. The submission of the management program shall be accompanied by a list identifying the agencies and organizations referred to in paragraph (a) (2) of this section, the nature of their interest, and the opportunities afforded such agencies and organizations to participate in the development of the management program. These organizations should include those identified pursuant to § 923.32, which have developed local, areawide or interstate plans applicable to an area within the coastal zone of the State as of January 1 of the year in which the management program is submitted for approval; and

(3) The management program will carry out the policies enumerated in section 303 of the Act.

(b) *Comment.* Statutory citation: Section 306(c) (1):

Prior to granting approval of a management program submitted by a coastal State, the Secretary shall find that . . . (t) he State has developed and adopted a management program for its coastal zone in accordance with rules and regulations promulgated by the Secretary, after notice, and with the opportunity of full participation by relevant Federal agencies, State agencies, local governments, regional organizations, port authorities, and other interested parties, public and private, which is adequate to carry out the purposes of this title and is consistent with the policy declared in section 303 of this title.

This requirement embodies the actual approval by the Secretary of Commerce of a State's coastal zone management program pursuant to all of the terms of the Act, plus associated administrative rules and regulations. As the operative section, it subsumes all of the requirements included in this part, which shall be considered the "rules and regulations promulgated by the Secretary" mentioned in section 306(c) (1). The citation, however, also includes some specific additional requirements, for which guidance and performance criteria are necessary. These additional requirements include:

(1) Adoption of the management program by the State. The management program must demonstrate that it represents the official policy and objectives of the State. In general, this will require

documentation in the management program that the State management entity has formally adopted the management program in accordance with either the rules and procedures established by statute, or in the absence of such law, administrative regulations.

(2) Opportunity for full participation by relevant Federal agencies, State agencies, local governments, regional organizations, port authorities, and other interested parties, public and private. A major thrust of the Act is its concern for full participation and cooperation in the development and implementation of management programs by all interested and affected agencies, organizations and individuals. This is specifically included in the statement of national policy in section 303(c). The State must provide evidence that the listed agencies and parties were, in fact, provided with an opportunity for full participation. It will be left to the States to determine the method and form of such evidence, but it should contain at a minimum:

(i) A listing, as comprehensive as possible, of all Federal and State agencies, local governments, regional organizations, port authorities and public and private organizations which are likely to be affected by, or have a direct interest in, the development and implementation of a management program (including those identified in § 923.32), and

(ii) A listing of the specific interests of such organizations in the development of the management program, as well as an identification of the efforts made to involve such bodies in the development process.

(a) "Opportunity for full participation" is interpreted as requiring participation at all appropriate stages of management program development. The assistance which can be provided by these public and private organizations can often be significant, and therefore contact with them should be viewed not only as a requirement for approval, but as an opportunity for tapping available sources of information for program development. Early and continuing contact with these agencies and organizations is both desirable and necessary. In many cases it may be difficult or impossible to identify all interested parties early in the development of the State's program. However, the public hearing requirement of § 923.41 should afford an opportunity to participate to interested persons and organizations whose interest was not initially noted.

(3) Consistency with the policy declared in section 303 of the Act. In order to facilitate this review, the State's management program must indicate specifically how the program will carry out the policies enumerated in section 303.

#### § 923.32 Consultation and coordination with other planning.

(a) *Requirement.* In order to fulfill the requirements contained in section 306(c)(2), the management program must include:

(1) An identification of those entities mentioned which have plans in effect on January 1 of the year submitted,

(2) A listing of the specific contacts made with all such entities in order to coordinate the management program with their plans,

(3) An identification of the conflicts with those plans which have not been resolved through coordination, and continuing actions contemplated to attempt to resolve them, and

(4) Indication that a regular consultative mechanism has been established and is active, to undertake coordination between the single State agency designated pursuant to § 923.23, and the entities in paragraph (B) of Section 306(c)(2).

(b) *Comment.* Statutory citation: Section 306(c)(2):

"Prior to granting approval of a management program submitted by a coastal State, the Secretary shall find . . . that the State has:

(A) Coordinated its program with local, areawide and interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the State's management program is submitted to the Secretary, which plans have been developed by a local government, an areawide agency designated pursuant to regulations established under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency; and

(B) Established an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (5) of this subsection and with local governments, interstate agencies, regional agencies and areawide agencies within the coastal zone to assure the full participation of such local governments and agencies in carrying out the purposes of this title."

Relevant background information on this requirement appears in 15 CFR 920.45(f), and is incorporated by reference herein. While the State will exercise its authority over land and water uses of Statewide significance in the coastal zone by one or more of the techniques set forth in § 923.28, the State management program must be coordinated with existing plans applicable to portions of the coastal zone. It should be noted that this section does not demand compliance of the State program with local plans, but the process envisioned should enable a State not only to avoid conflicts and ambiguities among plans and proposals, but to draw upon the planning capabilities of a wide variety of governments and agencies. Coordination implies a high degree of cooperation and consultation among agencies, as well as a mutual willingness on the part of the participants to accommodate their activities to the needs of the others in order to carry out the public interest. Perceptions of the public good will differ and it is recognized that not all real or potential conflicts can be resolved by this process. Nevertheless, it is a necessary step. Effective cooperation and consultation must continue as the management program is put into operation so that local governments, interstate, regional and areawide agencies can continue to participate in the carrying out of the management program. The "plans" referred to in (A) shall be considered those which have been officially adopted by the entity which developed

them, or which are commonly recognized by the entity as a guide for action. The list of relevant agencies required under § 923.31 will be of use in meeting this requirement. It will enable the State to identify those entities mentioned in (A) which have such plans and to provide evidence that coordination with them has taken place. The process envisioned should not only enable a State to avoid conflicts between its program and other plans applying within its coastal zone, but to draw upon the planning capabilities of a wide variety of local governments and other agencies. In developing and implementing those portions of the program dealing with power transmission lines, pipelines, interstate transportation facilities and other facilities which will significantly impact on neighboring States of a region, particular attention should be paid to the requirements of this section.

#### Subpart E—Miscellaneous

##### § 923.40 General.

The requirements in this subpart do not fall readily into any of the above categories but deal with several important elements of an approvable management program. They deal with public hearings in development of the management program, gubernatorial review and approval, segmentation of State programs and applicability of water and air pollution control requirements.

##### § 923.41 Public hearings.

(a) *Requirements.* In order to fulfill the requirement contained in section 306(c)(3), the management program must show evidence that the State has held public hearings during the development of the management program following not less than 30 days notification, that all documents associated with the hearings are conveniently available to the public for review and study at least 30 days prior to the hearing, that the hearings are held in places and at times convenient to affected populations, that all citizens of the State have an opportunity to comment on the total management program and that a report on each hearing be prepared and made available to the public within 45 days.

(b) *Comment.* Statutory citation: Section 306(c)(3):

Prior to granting approval of a management program submitted by a coastal State, the Secretary shall find that . . . (b) the State has held public hearings on the development of the management program.

Extensive discussion and statements of policy regarding this requirement appears in §§ 920.30, 920.31 and 920.32, which is incorporated herein by reference.

##### § 923.42 Gubernatorial review and approval.

(a) *Requirement.* In order to fulfill the requirement contained in section 306(c)(4), the management program must contain a certification signed by the Governor of the coastal State to the effect that he has reviewed and approved the management program and any amendments thereto. Certification may be omitted in



the case of a program submitted for preliminary approval.

(b) *Comment.* Statutory citation: Section 306(c) (4):

Prior to granting approval of a management program submitted by a coastal State, the Secretary shall find that . . . the management program and any changes thereto have been reviewed and approved by the Governor.

This requirement is self-explanatory.

**§ 923.43 Segmentation.**

(a) *Requirement.* If the State intends to develop and adopt its management program in two or more segments, it shall advise the Secretary as early as practicable stating the reasons why segmentation is appropriate and requesting his approval. Each segment of a management program developed by segments must show evidence (1) that the State will exercise policy control over each of the segmented management programs prior to, and following their integration into a complete State management program, such evidence to include completion of the requirements of § 923.11 (Boundaries of the coastal zone) and § 923.15 (National interest in the siting of facilities) for the State's entire coastal zone, (2) that the segment submitted for approval includes a geographic area on both sides of the coastal land-water interface, and (3) that a timetable and budget have been established for the timely completion of the remaining segments or segment.

(b) *Comment.* Statutory citation: Section 306(h):

At the discretion of the State and with the approval of the Secretary, a management program may be developed and adopted in segments so that immediate attention may be devoted to those areas within the coastal zone which most urgently need management programs: *Provided*, That, the State adequately provides for the ultimate coordination of the various segments of the management program into a single, unified program, and that the unified program will be completed as soon as reasonably practicable.

(1) This section of the Act reflects a recognition that it may be desirable for a State to develop and adopt its management program in segments rather than all at once because of a relatively long coastline, developmental pressures or public support in specific areas, or earlier regional management programs developed and adopted. It is important to note, however, that the ultimate objective of segmentation is completion of a management program for the coastal zone of the entire State in a timely fashion. Segmentation is at the State's option, but requires the approval of the Secretary. States should notify the Secretary at as early a date as possible regarding intention to prepare a management program in segments.

(2) Continuing involvement at the State as well as local level in the development and implementation of segmented programs is essential. This emphasis on State participation and coordination with the program as a whole should be reflected in the individual segments of a management program.

Regional agencies and local governments may play a large role in developing and carrying out such segmented programs, but there must be a continuing State voice throughout this process. This State involvement shall be expressed in the first segment of the management program in the form of evidence that (1) the boundaries of the coastal zone for the entire State have been defined (pursuant to § 923.11) and (2) there has been adequate consideration of the national interest involved in the siting of facilities necessary to meet requirements which are other than local in nature (pursuant to § 923.15) for the State's entire coastal zone. These requirements are designed to assure that the development of a Statewide coastal zone management program proceeds in an orderly fashion and that segmented programs reflect accurately the needs and capabilities of the State's entire coastal zone which are represented in that particular segment.

(3) The Act's intent of encouraging and assisting State governments to develop a comprehensive program for the control of land and water uses in the coastal zone is clear. This intent should therefore apply to segments as well, and segmented management programs should be comprehensive in nature and deal with the relationship between and among land and water uses. No absolute minimum or maximum geographic size limitations will be established for the area of coverage of a segment. On the one hand, segments should include an area large enough to permit comprehensive analyses of the attributes and limitations of coastal resources within the segment of State needs for the utilization or protection of these resources and of the interrelationships of such utilizations. On the other hand, it is not contemplated that a segmented management program will be developed solely for the purpose of protecting or controlling a single coastal resource or use, however desirable that may be.

(4) One of the distinguishing features of a coastal zone management program is its recognition of the relationship between land uses and their effect upon coastal waters, and vice versa. Segments should likewise recognize this relationship between land and water by including at least the dividing line between them, plus the lands or waters on either side which are mutually affected. In the case of a segment which is predominantly land, the boundaries shall include those waters which are directly and significantly impacted by land uses in the segment. Where the predominant part of the segment is water, the boundaries shall include the adjacent shorelands strongly influenced by the waters, including at least transitional and inter-tidal areas, salt marshes, wetlands and beaches (or similar such areas in Great Lake States).

(5) Segmented management programs submitted for approval will be reviewed and approved in exactly the same manner as programs for complete coastal zones, utilizing the same approval criteria, plus those of this section.

**§ 923.44 Applicability of air and water pollution control requirements.**

(a) *Requirement.* In order to fulfill the requirements contained in Section 307(f) of the Act the management program must be developed in close coordination with the planning and regulatory systems being implemented under the Federal Water Pollution Control Act and Clean Air Act, as amended, and be consistent with applicable State or Federal water and air pollution control standards in the coastal zone. Documentation by the official or officials responsible for State implementation of air and water pollution control activities that those requirements have been incorporated into the body of the coastal zone management program should accompany submission of the management program.

(b) *Comment.* Statutory citation: Section 307(f):

Notwithstanding any other provision of this title, nothing in this title shall in any way affect any requirement (1) established by the Federal Water Pollution Control Act, as amended, or the Clean Air Act, as amended, or (2) established by the Federal government, or any State or local government pursuant to such Acts. Such requirements shall be incorporated in any program developed pursuant to this title, and shall be the water pollution control requirements and air pollution control requirements applicable to such program.

(1) The basic purpose of this requirement is to ensure that the management program does not conflict with the national and State policies, plans and regulations mandated by the Federal Water Pollution Control Act, as amended, and the Clean Air Act as amended. The policies and standards adopted pursuant to these Acts should be considered essential baselines against which the overall management program is developed. This is a specific statutory requirement that reflects the overall coastal zone management objective of unified state management of environmental laws, regulations and applicable standards. To this end, management programs should provide for continuing coordination and cooperation with air and water programs during subsequent administration of the approved management program.

(2) There are also significant opportunities for developing working relationships between air and water quality agencies and coastal zone management programs. These opportunities include such activities as joint development of Section 208 areawide waste treatment management planning and coastal zone management programs; consolidation and/or incorporation of various planning and regulatory elements into these closely related programs; coordination of monitoring and evaluation activities; increased management attention being accorded specifically to the coastal waters; consultation concerning the desirability of adjusting state water quality standards and criteria to complement coastal zone management policies; and designation of areas of particular concern or priority uses.

**Subpart F—Applications for Administrative Grants****§ 923.50 General.**

The primary purpose of administrative grants made under section 306 of the Act is to assist the States to implement coastal zone management programs following their approval by the Secretary of Commerce. The purpose of these guidelines is to define clearly the processes by which grantees apply for and administer grants under the Act. These guidelines shall be used and interpreted in conjunction with the Grants Management Manual for Grants under the Coastal Zone Management Act, hereinafter referred to as the "Manual." This Manual contains procedures and guidelines for the administration of all grants covered under the Coastal Zone Management Act of 1972. It has been designed as a tool for grantees, although it addresses the responsibilities of the National Oceanic and Atmospheric Administration and its Office of Coastal Zone Management, which is responsible for administering programs under the Act. The Manual incorporates a wide range of Federal requirements, including those established by the Office of Management and Budget, the General Services Administration, the Department of the Treasury, the General Accounting Office and the Department of Commerce. In addition to specific policy requirements of these agencies, the Manual includes recommended policies and procedures for grantees to use in submitting a grant application. Inclusion of recommended policies and procedures for grantees does not limit the choice of grantees in selecting those most useful and applicable to local requirements and conditions.

**§ 923.51 Administration of the program.**

The Congress assigned the responsibility for the administration of the Coastal Zone Management Act of 1972 to the Secretary of Commerce, who has designated the National Oceanic and Atmospheric Administration (NOAA) as the agency in the Department of Commerce to manage the program. NOAA has established the Office of Coastal Zone Management for this purpose. Requests for information on grant applications and the applications themselves should be directed to:

Director, Office of Coastal Zone Management  
(OCZM)  
National Oceanic and Atmospheric Administration,  
U.S. Department of Commerce  
Rockville, Maryland 20853

**§ 923.52 State responsibility.**

(a) The application shall contain a designation by the Governor of a coastal State of a single agency to receive and have fiscal and programmatic responsibility for administering grants to implement the approved management program.

(b) A single State application will cover all program management elements, whether carried out by State agencies, areawide/regional agencies, local governments, interstate or other entities.

**§ 923.53 Allocation.**

Section 306(f) allows a State to allocate a portion of its administrative grant to sub-State or multi-State entities if the work to result from the allocation contributes to the effective implementation of the State's approved coastal zone management program. The requirements for identifying such allocations are set forth in § 923.55(e).

**§ 923.54 Geographical segmentation.**

Authority is provided in the Act for a State's management program to be developed and adopted in segments. Additional criteria for the approval of a segmented management program are set forth in Subpart E § 923.43. Application procedures for an administrative grant to assist in administering an approved segmented management program will be the same as set forth in this subpart for applications to administer an approved management program for the entire coastal zone of a State.

**§ 923.55 Application for the initial administrative grant.**

(a) The Form CD-288, Preapplication for Federal Assistance, required only for the initial grant, must be submitted 120 days prior to the beginning date of the requested grant. The preapplication shall include documentation, signed by the Governor, designating the State office, agency or entity to apply for and administer the grant. Copies of the approved management program are not required. The preapplication form may be submitted prior to the Secretary's approval of the applicant's management program provided, after consultation with OCZM, approval is anticipated within 60 days of submittal of the preapplication.

(b) All applications are subject to the provisions of OMB Circular A-95 (revised). The Form CD-288, Preapplication for Federal Assistance, will be transmitted to the appropriate clearinghouses at the time it is submitted to the Office of Coastal Zone Management (OCZM). If the application is determined to be Statewide or broader in nature, a statement to that effect shall be attached to the Preapplication form submitted to OCZM. Such a determination does not preclude the State clearinghouse from involving areawide clearinghouses in the review. In any event, whether the application is considered to be Statewide or not, the Preapplication form shall include an attachment indicating the date copies of the Preapplication form were transmitted to the State clearinghouse and if applicable, the identity of the areawide clearinghouse(s) receiving copies of the Preapplication form and the date(s) transmitted. The Preapplication form may be used to meet the project notification and review requirements of OMB Circular A-95 with the concurrence of the appropriate clearinghouses. In the absence of such concurrence the project notification and review procedures, established State and areawide clearinghouses, should be implemented simul-

taneously with the distribution of the preapplication form.

(c) Costs claimed as charges to the grant project must be beneficial and necessary to the objectives of the grant project. The allowability of costs will be determined in accordance with the provisions of FMC 74-4. Administrative grants made under section 306(a) of the Act are clearly intended to assist the States in administering their approved management programs. Such intent precludes tasks and related costs for long range research and studies. Nevertheless it is recognized that the coastal zone and its management is a dynamic and evolving process wherein experience may reveal the need for specially focused, short-term studies, leading to improved management processes and techniques. The OCZM will consider such tasks and their costs, based upon demonstrated need and expected contribution to more effective management programs.

(d) The Form CD-292, Application for Federal Assistance (Non-Construction Programs), constitutes the formal application and must be submitted 60 days prior to the desired grant beginning date. The application must be accompanied by evidence of compliance with A-95 requirements including the resolution of any problems raised by the proposed project. The OCZM will not accept applications substantially deficient in adherence to A-95 requirements.

(e) The State's work program implementing the approved management program is to be set forth in Part IV, Program Narrative, of the Form CD-292 and must describe the work to be accomplished during the grant period. The work program should include:

(1) An identification of those elements of the approved management program that are to be supported all or in part by the grant and the matching share, hereinafter called the grant project. In any event, activities related to the establishment and implementation of State responsibilities pursuant to Section 307 (c) (3) and Section 307(d) of the Act, are to be included in the grant project.

(2) A precise statement of the major tasks required to implement each element.

(3) For each task, the following should be specified:

(i) A concise statement of how each task will accomplish all or part of the program element to which it is related. Identify any other State, areawide, regional or interstate agencies or local governments that will be allocated responsibility for carrying out all or portions of the task. Indicate the estimated cost of the subcontract/grant for each allocation.

(ii) For each task indicate the estimated total cost. Also indicate the estimated total man-months, if any, allocated to the task from the applicant's in-house staff.

(iii) For each task, list the estimated cost using the object class categories 6.a. through k., Part III, Section B—Budget Categories of Form CD-292.

## RULES AND REGULATIONS

(4) The sum of all the task costs in sub-paragraph (3) of this paragraph should equal the total estimated grant project costs.

(5) Using two categories, Professional and Clerical, indicate the total number of personnel in each category on the applicant's in-house staff, that will be assigned to the grant project. Additionally indicate the number assigned full time and the number assigned less than full time in the two categories.

(6) An identification of those management program elements, if any, that will not be supported by the grant project, and how they will be implemented.

### § 923.55 Approval of applications.

(a) The application for an administrative grant of any coastal State with a management program approved by the Secretary of Commerce, which complies with the policies and requirements of the Act and these guidelines, shall be approved by OCZM, assuming available funding.

(b) Should an application be found deficient, OCZM will notify the applicant in writing, setting forth in detail the manner in which the application fails to conform to the requirements of the Act or this subpart. Conferences may be held on these matters. Corrections or adjustments to the application will provide the basis for resubmittal of the application for further consideration and review.

(c) OCZM may, upon finding of extenuating circumstances relating to applications for assistance, waive appropriate administrative requirements contained herein.

### § 923.57 Amendments.

Amendments to an approved application must be submitted to, and approved by, the Secretary prior to initiation of the change contemplated. Requests for substantial changes should be discussed with OCZM well in advance. It is recognized that, while all amendments must be approved by OCZM, most such requests will be relatively minor in scope; therefore, approval may be presumed for minor amendments if the State has not been notified of objections within 30 working days of date of postmark of the request.

### § 923.58 Applications for second and subsequent year grants.

(a) Second and subsequent year applications will follow the procedures set forth in this subpart, with the following exceptions:

(1) The preapplication form may be used at the option of the applicant. If used, the procedures set forth in § 923.55 (b) will be followed and the preapplication is to be submitted 120 days prior to the beginning date of the requested grant. If the preapplication form is not used, the A-95 project notification and review procedures established by State and area-wide clearinghouses should be followed.

(2) The application must contain a statement by the Governor of the coastal State or his designee that the management program as approved earlier by the

Secretary of Commerce, with any approved amendments, is operative and has not been materially altered. This statement will provide the basis for an annual OCZM certification that the approved management program remains in effect, thus fulfilling, in part, the requirements of section 309(a) for a continuing review of management programs.

(3) The Governor's document designating the applicant agency is not required, unless there has been a change of designation.

(4) Copies of the approved management program or approved amendments thereto are not required.

[FR Doc. 75-738 Filed 1-9-75; 8:45 am]



## APPENDIX 3

### REVISED PLANNING AND ZONING STATUTES IN MAINE



**REVISED PLANNING AND  
ZONING STATUTES  
IN MAINE**

**1974**

**Information Pamphlet**

**Containing excerpts from Titles 1, 12, 17, 30,**

**33, and 38 of**

**Maine Revised Statutes Annotated**



**EXECUTIVE DEPARTMENT  
MAINE STATE  
PLANNING OFFICE**

This information pamphlet contains excerpts from Titles 1, 12, 17, 30, 33 and 38 of the Maine Revised Statutes Annotated, related to municipal planning and zoning, subdivisions and minimum lot size, and regional planning. Also included are certain key provisions from Titles 12, 17, and 38, which are related to local planning functions, and a list of additional laws and regulations which may be of interest to municipalities.

The adoption of Municipal Home Rule Provisions in the State Constitution has permitted a number of changes in State statutes concerning municipal planning. Under Home Rule "any municipality may, by the adoption, amendment or repeal of ordinances or by-laws, exercise any power or function which the Legislature has the power to confer upon it, which is not denied expressly or by clear implication, and exercise any power or function granted to the municipality by the constitution, general law, or charter." (Title 30 M.R.S.A. Sec. 1917)

This places the responsibility on the municipality for establishing laws governing the exercise of particular powers and functions. It permits greater flexibility in local government. For example, a town or city may establish by statute the composition and functions of the planning board to fit its needs, since the State statute dealing with this has been repealed.

Further assistance with regard to State legislation may be obtained from the following:

Regional Planning Commissions.

Maine State Planning Office.

Maine Municipal Association.

Municipal Lawyers.

#### Abbreviations used in this pamphlet:

M.R.S.A. —Maine Revised Statutes Annotated  
 Sec. —Section  
 § —Section  
 Ch. —Chapter  
 P.L. —Public Laws

The preparation of this report was financially aided by a comprehensive planning grant from the U.S. Dept. of Housing and Urban Development

## CONTENTS MUNICIPAL PLANNING AND ZONING

### MUNICIPAL PLANNING AND ZONING

#### General

##### Title 30 M.R.S.A.

Sec. 1917	Ordinance, Power Limited .....	1
4961	Comprehensive Plan .....	1
4962	Zoning Ordinances .....	2
4963	Zoning Adjustment .....	2
4964	Savings Provisions .....	3
2411	Board of Appeals .....	3
2153	Enactment Procedure .....	5
2155	Proof of Ordinances .....	5
2251	Conflicts of Interest .....	6

#### Ordinance Certification

##### Title 33 M.R.S.A.

Sec. 622-A	Municipal Land Control Ordinances	6
------------	-----------------------------------	---

#### Public Proceedings

##### Title 1 M.R.S.A.

Sec. 401	Declaration of Public Policy; Open Meetings .....	6
402	Public Proceedings Defined .....	6
403	Meetings To Be Open To Public ....	7
404	Executive Sessions .....	7
404-A	Decisions .....	7

#### Mandatory Shoreland Zoning and Subdivision Controls

##### Title 12 M.R.S.A.

Sec. 4811	Shoreland Areas .....	7
4811-A	Definitions .....	8
4812	Municipal Control .....	8
4812-A	Requirements .....	9
4813	Municipal Failure to Accomplish Purposes .....	9
4814	Cooperation; Enforcement .....	10

### SUBDIVISIONS AND MINIMUM LOT SIZE

#### Subdivisions

##### Title 30 M.R.S.A.

Sec. 4956	Land Subdivisions .....	11
-----------	-------------------------	----

#### Minimum Lot Size

##### Title 12 M.R.S.A.

Sec. 4807	Definitions .....	14
4807-A	Minimum Lot Size Required .....	15
4807-B	Approval of Smaller Lots .....	16
4807-C	Approval of Lesser Frontage .....	16
4807-D	Exemptions .....	16
4807-E	Appeal .....	16
4807-G	Violations .....	17

## REGIONAL PLANNING

<b>Regional Planning Commissions</b>	
<b>Title 30 M.R.S.A.</b>	
Sec. 1301	Membership in a Regional Planning Commission ..... 17
4511	Establishment ..... 17
4512	Incorporation; Powers ..... 17
4513	Representation ..... 17
4514	Bylaws; Records ..... 18
4515	Finances ..... 18
4516	Staff Services ..... 18

<b>Regional Planning and Development Districts</b>	
<b>Title 30 M.R.S.A.</b>	
Sec. 4521	Regional Planning and Development Districts ..... 19
4522	Planning and Program Review .... 19
4523	Councils of Government ..... 22
Sec. 5, P.L. 1973, Ch. 534,	Transition Provisions ..... 22

<b>Councils of Governments</b>	
<b>Title 30 M.R.S.A.</b>	
Sec. 1981	Establishment ..... 22
1982	Contents of Agreement ..... 22
1983	Powers and Duties ..... 22
1984	Bylaws ..... 23
1985	Staff ..... 23
1986	Finances; Annual Report ..... 23

## RELATED LEGISLATION

<b>Site Location Act</b>	
<b>Title 38 M.R.S.A.</b>	
Sec. 481	Findings and Purpose ..... 24
482	Definitions ..... 24
483	Notification Required; Commission Action; Administrative Appeals .. 25
484	Hearings; Orders; Construction Suspended ..... 25
485	Failure to Notify Commission; Hearing; Injunction; Orders ..... 27
486	Enforcement ..... 27
487	Judicial Review ..... 28
488	Applicability ..... 28

<b>Coastal Wetlands</b>	
<b>Title 12 M.R.S.A.</b>	
Sec. 4701	Procedure; Hearing ..... 28
4702	Permits ..... 29
4703	Unorganized Territory; Two or More Municipalities ..... 30
4704	Appeal ..... 30
4706	Application ..... 30
4707	Exemptions ..... 30
4708	Exception ..... 30
4709	Violation ..... 30

4751	Purpose ..... 31
4752	Definition ..... 31
4753	Administration ..... 31
4754	Orders ..... 31
4755	Hearing ..... 31
4756	Recording ..... 32
4757	Appeal Procedure ..... 32
4758	Violation; Penalty ..... 33

## Dredging, Discharging

<b>Title 38 M.R.S.A.</b>	
Sec. 417	Certain Deposits and Discharge Prohibited ..... 33
422	Dredging Permits ..... 33

## Dam Building, Stream Bulldozing

<b>Title 12 M.R.S.A.</b>	
Sec. 2203	Notice to Commissioner of Building of Dam ..... 35
2205	Bulldozing of Rivers, Streams and Brooks ..... 35
2206	Prohibitions ..... 35
2207	Permits; Standards ..... 35
2208	Hearings; Appeals ..... 36
2209	Administration ..... 36
2210	Penalties ..... 36
2211	Injunction; Restoration ..... 37
2212	Exemptions ..... 37
Sec. 2	Application ..... 37

## Nuisances

<b>Title 17 M.R.S.A.</b>	
Sec. 2802	Nuisances ..... 37

<b>ADDITIONAL LEGISLATION</b> ..... 39
--

Statute changes enacted by the Special Session of the 106th. Legislature are reflected in the following sections:

Title 1   § 404-A  
Title 12   § 2206-2212 (new)  
          § 4807-D  
          § 4807-F (repealed)  
          § 4812  
          § 4814  
Title 30   § 2251  
          § 4956 (1) and (5)  
          § 4964  
Title 33   § 622-A  
Title 38   § 422

## MUNICIPAL PLANNING AND ZONING

### General

#### Title 30

##### § 1917. Ordinance, power limited

Any municipality may, by the adoption, amendment or repeal of ordinances or bylaws, exercise any power or function which the Legislature has power to confer upon it, which is not denied either expressly or by clear implication, and exercise any power or function granted to the municipality by the Constitution, general law or charter. No change in the composition, mode of election or terms of office of the legislative body, the mayor or the manager of any municipality may be accomplished by bylaw or ordinance.

##### § 4961. Comprehensive plan

1. **Definition.** "Comprehensive Plan" shall mean a compilation of policy statements, goals, standards, maps and pertinent data relative to the past, present and future trends of the municipality with respect to its population, housing, economics, social patterns, land use, and water resources and their use, transportation facilities and public facilities prepared by the municipal planning board, agency or office. The comprehensive plan, being as much a process as a document capable of distribution, may at successive stages, consist of data collected, preliminary plans, alternative action proposals, and finally as a comprehensive plan to be adopted. In its final stages, it may consist of a series of subsidiary but inter-related plans such as, but not limited to, a water and sewerage system plan, a land use plan, a community facilities plan, a transportation plan, an urban renewal or rehabilitation plan, an air or water pollution control plan, and a park and open space plan. The comprehensive plan shall include recommendations for plan execution and implementation such as, but not limited to, a capital improvements program, renewal and rehabilitation programs, land use control ordinances, and building, safety and housing codes. The comprehensive plan shall include mechanisms which will ensure continual data collection, re-evaluation in light of new alternatives, and revision. The comprehensive plan may include planning techniques such as, but not limited to, planned unit development, site plan approval, open space zoning and clustered development.

2. **Public participation.** In the preparation of a comprehensive plan, the public shall be given an adequate opportunity to be heard.

(Title 30)

§ 4962. Zoning ordinances

1. **Terms.** Any zoning ordinance, or provision thereof, adopted pursuant to the home rule power granted to all municipalities under the Constitution, Article VIII-A and chapter 201-A, specifically section 1917 shall be subject to the following:

A. Such ordinance or provision shall be pursuant to and consistent with a comprehensive plan adopted by its legislative body.

B. A zoning map describing each zone established or modified shall be adopted as part of the zoning ordinance or incorporated therein. Any conflict between said zoning map and a description by metes and bounds shall be resolved in favor of the description by metes and bounds.

C. Real estate used or to be used by a public service corporation shall be wholly or partially exempted from an ordinance only where on petition, notice and public hearing the Public Utilities Commission has determined that such exemption is reasonably necessary for public welfare and convenience.

D. County and municipal governments, and districts shall be governed by the provisions of any zoning ordinance.

E. Any zoning ordinance shall be advisory with respect to the State.

F. Any property or use existing in violation of any zoning ordinance, is a nuisance.

G. When a person petitions for rezoning of an area for the purpose of development in accordance with an architect's plan, the area shall not be rezoned unless the petitioner posts a performance bond equal to at least 25% of the estimated cost of the development. Said bond shall become payable to the municipality if the petitioner fails to begin construction in a substantial manner and in accordance with the plan within one year of the effective date of the rezoning.

H. For the purpose of this subchapter, "zoning" is defined as the division of a municipality into districts and the prescription and reasonable application of different regulations in each district. In the preparation of a zoning ordinance the public shall be given an adequate opportunity to be heard.

§ 4963. Zoning Adjustment

1. **Establishment.** A board of appeals is established in any municipality which adopts a zoning ordinance for the purpose of hearing appeals from actions or failure to act of the office charged with the enforcement of the zoning ordinance. Such

(Title 30)

board of appeals shall be governed by section 2411, except that subsection 2 of section 2411 shall not apply to boards existing on September 23, 1972.

2. **Powers.** In deciding any appeal:

A. The board may interpret the provisions of the ordinance which are called into question.

B. The board may approve the issuance of a special exception permit or conditional use permit in strict compliance with the ordinance; and provided the municipality has not authorized the planning board, agency or office to issue said permits.

C. The board may grant a variance in strict compliance with subsection 3.

3. **Variance.** A variance may be granted by the board only where strict application of the ordinance, or a provision thereof, to the petitioner and his property would cause undue hardship or would not be in the best interest of the community.

4. **Parties.** The board shall reasonably notify of any hearing, the petitioner, the planning board, agency or office and the municipal officers and such persons shall be made parties to the action. All interested persons shall be given a reasonable opportunity to have their views expressed at any hearing.

§ 4964. Savings provisions

Any planning board or district established and any ordinance or map adopted under a prior and repealed statute shall remain in effect until abolished, amended or repealed. Planning boards established pursuant to provisions of repealed section 4952, subsection 1 shall continue to be governed by those provisions until they are superseded by municipal ordinance.

§ 2411. Board of Appeals

1. **Establishment.** A municipality may establish a board of appeals and the municipal officers shall appoint the members and determine their compensation. It is intended that all boards of appeals established subsequent to September 23, 1971 be governed by this section.

2. **Organization.**

A. The board shall consist of 5 or 7 members, serving staggered terms of a least 3 and not more than 5 years. The board shall elect annually a chairman and secretary from its membership.

B. Neither a municipal officer nor his spouse may be a member or associate member of the board.

(Title 30)

C. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the members, except the member who is being challenged.

D. A member of the board may be dismissed for cause by the municipal officers before the expiration of his term.

E. Municipalities of 5,000 or more residents may by ordinance provide for a board of appeals with associate members not to exceed 3 in number. In the event there are 2 or 3 associate members, the chairman shall designate which shall serve in the stead of the absent member.

**3. Procedure.**

A. The chairman shall call meetings of the board as required. The chairman shall also call meetings of the board when requested to do so by a majority of the members or by the municipal officers. A quorum of the board necessary to conduct an official board meeting shall consist of at least 3 members. The chairman shall preside at all meetings of the board and be the official spokesman of the board.

B. The secretary shall maintain a permanent record of all board meetings and all correspondence of the board. The secretary shall be responsible for maintaining those records which are required as part of the various proceedings which may be brought before the board. All records to be maintained or prepared by the secretary are deemed public, shall be filed in the municipal clerk's office and may be inspected at reasonable times.

C. The board may provide by rule, which shall be recorded by the secretary, for any matter relating to the conduct of any hearing, provided that any rule may be waived by the chairman upon good cause shown.

D. The board may receive any oral or documentary evidence but shall provide as a matter of policy for the exclusion of irrelevant, immaterial or unduly repetitious evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

E. The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceeding, shall constitute the record. All decisions shall become a part of the record and

(Title 30)

shall include a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented and the appropriate order, relief or denial thereof. Notice of any decision shall be mailed or hand delivered to the petitioner, his representative or agent, the planning board, agency or office and the municipal officers within 7 days of their decision.

F. An appeal may be taken, within 30 days after the decision is rendered, by any party to Superior Court from any order, relief or denial in accordance with Rule 80B. The hearing before the Superior Court shall be a trial de novo without a jury.

4. Jurisdiction. Any municipality establishing a board of appeals under this section may vest the board with the power to hear any appeal by any person, affected directly or indirectly, from any decision, order, rule or failure to act of any officer, board, agency or other body where such appeal is necessary, proper or required.

**§ 2153. Enactment procedure**

A municipality may enact ordinances by the following procedure:

1. Posted. The proposed ordinance shall be attested and posted in the manner provided for town meetings.

2. Certification. One copy of the proposed ordinance shall be certified by the municipal officers to the municipal clerk at least 7 days next prior to the day of election to be preserved as a public record and copies shall be available at that time for distribution to the voters by the municipal clerk as well as at the time of the town meeting.

3. Question. The subject matter of the proposed ordinance shall be reduced to the question: "Shall an ordinance entitled ' ' be enacted?", and shall be submitted to the town meeting for action either as an article in the warrant or a question on a secret ballot.

4. Application. This section shall not apply to ordinances which may be enacted by the municipal officers.

**§ 2155. Proof of ordinances**

The submission to any court or administrative tribunal of a municipal ordinance, bylaw, order or resolve of the legislative body or municipal officers of a municipality, when such ordinance, bylaw, order or resolve has been certified over the signature of the municipal clerk, shall be prima facie proof of the validity thereof.

(Title 30)

§ 2251. Conflicts of interest

Certain proceedings of municipalities, counties and quasi-municipal corporations and their officials are voidable and actionable according to the following provisions.

1. **Voting.** The vote of a body is voidable when any official in his official position votes on any question in which he has a direct or an indirect pecuniary interest.

**Ordinance Certification**

**Title 33**

§ 662-A. Municipal land control ordinances

Any municipality having in force or adopting any ordinance which relates to land control, including, but not limited to, zoning and subdivisions, shall file a certified copy of such ordinance in the registry of deeds in the county or registry district wherein such municipality is located and said municipality shall forthwith transmit to said county or district registry of deeds any amendment or amendments to said ordinance.

The register of deeds in the several counties and registry districts shall provide suitable protection and access to such filed ordinances in the manner customarily used for official records, and shall note on an official record the date of filing of each ordinance and shall stamp each ordinance in a manner clearly showing the date of filing; and such matter shall be filed by name of municipality. Municipalities will not be required to pay a fee or charge for said filing.

**Public Proceedings**

**Title 1**

§ 401. Declaration of public policy; open meetings

The Legislature finds and declares that public proceedings exist to aid in the conduct of the people's business. It is the intent of the Legislature that their actions be taken openly and that their deliberations be conducted openly.

§ 402. Public proceedings defined

The term "public proceedings" as used in this subchapter shall mean the transactions of any functions affecting any or all citizens of the State by any administrative or legislative body of the State, or of any of its counties or municipalities, or of any other political subdivision of the State with which function it is charged under any statute or under any rule or regulation of such administrative or legislative body or agency.

(Title 1)

§ 403. Meetings to be open to public

All public proceedings shall be open to the public, and all persons shall be permitted to attend any meetings of these bodies or agencies, and any minutes of such meetings as are required by law shall be promptly recorded and open to public inspection, except as otherwise specifically provided by statute.

§ 404. Executive sessions

Nothing contained in this subchapter shall be construed to prevent these bodies or agencies from holding executive sessions, subject to the following conditions: That such sessions shall not be used to defeat the purposes of this subchapter; that no ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action shall be finally approved at such executive sessions; that such executive sessions may be called only by a majority vote of the members of such bodies or agencies. The conditions of this section shall not apply to executive sessions of committees of the Maine Legislature.

§ 404-A. Decisions

1. **Written record.** Every state, quasi-state, county, municipal and quasi-municipal office, agency, department, bureau, district, commission or other entity thereof, hereinafter in this subchapter called "agency," shall make a written record of every decision involving the conditional approval or denial of an application, license, certificate or any other type of permit. Such written record or a copy thereof shall be kept by the agency and made available to any interested member of the public who may wish to review it.

2. **Denial.** Whenever an agency denies approval of an application submitted to it, or denies a license, certificate or any other type of permit, or issues its approval or grants such license, certificate or any other type of permit upon conditions not otherwise specifically required by the statute, ordinance or regulation pursuant to which the approval for granting is issued, the agency shall set forth the reason or reasons for its decision and make findings of fact, in writing, sufficient to apprise the applicant and any interested member of the public of the basis for such decision.

**Mandatory Shoreland Zoning and Subdivision Controls**

Title 12 (effective date June 28, 1973)

§ 4811. Shoreland areas

To aid in the fulfillment of the state's role as trustee of its waters and to promote public health,



(Title 12)

safety and general welfare, it is declared to be in the public interest that shoreland areas defined as land within 250 feet of the normal high water mark of any pond, river or salt water body be subjected to zoning and subdivision controls. The purposes of such controls shall be to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish, aquatic life, bird and other wildlife habitat; control building sites, placement of structures and land uses; and conserve shore cover, visual as well as actual points of access to inland and coastal waters and natural beauty.

§ 4811-A. Definitions

For purposes of this chapter, pond shall include any inland body of water which has a surface area in excess of 10 acres, except where such body of water is man-made and in addition is completely surrounded by land held by a single owner, and except those privately owned ponds which are held primarily as waterfowl and fish breeding areas or for hunting and fishing. A river is defined as any free flowing body of water from that point at which it provides drainage for a watershed of 25 square miles to its mouth. The State Planning Office shall prepare and publish a list of such rivers for the use of the municipalities no later than November 1, 1973.

§ 4812. Municipal control

Cities and towns pursuant to presently existing enabling legislation are authorized to plan, zone and control the subdivision of land. With respect to the shoreland areas defined in section 4811, cities and towns, hereafter called municipalities, shall adopt zoning and subdivision control ordinances according to the following schedule.

1. Prior to July 1, 1973. Prior to July 1, 1973, the municipal officers of each city or town shall have appointed an appropriate municipal body with responsibility for preparing such ordinances as are necessary for compliance with this chapter and shall certify such appointment to the State Planning Office.

2. Prior to July 1, 1974. Prior to July 1, 1974, each municipality shall have:

A. Prepared a comprehensive plan adequate to comply with the requirements of Title 30, section 4961 and this chapter and notified the State Planning Office;

B. Adopted shoreland protection, subdivision and zoning ordinances adequate to comply with the

(Title 12)

requirements of this chapter for shoreland protection and filed a copy of said ordinances with the State Planning Office.

In order to aid municipalities in meeting the requirements of this chapter, the Department of Inland Fisheries and Game shall, prior to January 1, 1973, identify all of those areas in municipalities which it finds to be areas of moderate to high waterfowl breeding areas. Any or all areas within a municipality which are subject to nonmunicipal zoning controls may be exempted from the operation of this section upon a finding by the Board of Environmental Protection and the Maine Land Use Regulation Commission that the purposes of this chapter have been accomplished by such nonmunicipal zoning.

§ 4812-A. Requirements

In addition to controls required by this chapter, municipalities may adopt zoning and subdivision controls applicable to other bodies of water as required to protect the public health, safety and welfare and further the purposes of this chapter.

Zoning ordinances adopted pursuant to this chapter shall be pursuant to and consistent with a comprehensive plan.

Zoning ordinances adopted pursuant to this chapter need not depend upon the existence of a zoning ordinance for all of the land and water area within a municipality, despite the provisions of Title 30, section 4962 to the contrary, it being the intention of the Legislature to recognize that it is reasonable for municipalities to treat specially with shoreland areas and to choose to immediately zone around water bodies rather than to wait until such time as it enacts zoning ordinances for all of the land within its boundaries. However, the provisions of ordinances, which zone shoreland areas only, must relate solely to measures necessary to protect and enhance water quality, preserve and enhance the aesthetics of water bodies and views therefrom, protect shoreland areas from erosion, protect and preserve that vegetation and wildlife which is more indigenous to shoreland areas than areas not associated with water bodies, avoid the problems associated with floodplain development and use and to encourage and insure the integrity of points of access to water bodies.

§ 4813. Municipal failure to accomplish purposes

If any municipality fails to adopt ordinances as required by section 4812 for shoreland areas as defined in section 4811 or if the Board of Environmental Protection and the Maine Land Use Regula-

(Title 12)

tion Commission determine that particular municipal ordinances because of their laxity and permissiveness do not adequately prevent and control water pollution, protect wildlife habitat, conserve shore cover or otherwise fail to accomplish the purposes outlined in section 4811, the Department of Environmental Protection and the Maine Land Use Regulation Commission shall, following consultation with the State Planning Office, with respect to these shoreland areas, adopt suitable ordinances for these municipalities, which ordinances the respective municipalities shall then administer and enforce.

The Department of Environmental Protection and the Maine Land Use Regulation Commission, acting pursuant to the administrative direction of the State Planning Office, shall by December 15, 1973 adopt minimum guidelines for the protection of shoreland areas reflecting considerations of preventing and controlling water pollution, protecting spawning grounds, fish, aquatic life, bird and other wildlife habitat, location and size of structures and signs and conserving shore cover. The incorporation of such guidelines into a municipal regulatory ordinance shall be deemed sufficient to meet the requirements of this section.

§ 4814. Cooperation; enforcement

The Board of Environmental Protection and the Maine Land Use Regulation Commission, municipalities and all state agencies shall mutually cooperate to accomplish the objectives of this chapter. To that end, the board and the commission shall consult with the governing bodies of municipalities and to whatever extent necessary with other state agencies to secure voluntary uniformity of regulations, so far as practicable, and shall extend all possible assistance therefor. The State Planning Office shall be responsible for coordinating the efforts and responsibilities of the Board of Environmental Protection and the Maine Land Use Regulation Commission acting pursuant to this chapter.

If a municipality fails to administer and enforce zoning ordinances adopted by it or the State, pursuant to the requirements of this chapter, the Attorney General shall seek an order of the Superior Court of the county in which the municipality lies, requiring the municipal officials to enforce such zoning ordinance. The Attorney General shall be made a party to all civil and criminal actions in which the pleadings challenge the legality of any ordinance or portion thereof adopted pursuant to the guidelines promulgated under section 4813.

(Title 30)

SUBDIVISIONS AND MINIMUM LOT SIZE

Subdivisions

Title 30

§ 4956. Land subdivisions

1. **Defined.** A subdivision is the division of a tract or parcel of land into 3 or more lots within any 5-year period, whether accomplished by sale, lease, development, building or otherwise, except when the division is accomplished by inheritance, order of court or gift to a relative; unless the intent of such gift is to avoid the objectives of this section. For the purposes of this section, a lot shall not include a transfer of an interest in land to an abutting landowner, however accomplished.

In determining whether a parcel of land is divided into 3 or more lots, land retained by the subdivider for his own use as a single family residence for a period of at least 5 years shall not be included.

No sale or lease of any lot or parcel shall be considered as being a part of a subdivision if such a lot or parcel is 40 acres or more in size, except where the intent of such sale or lease is to avoid the objectives of this statute.

2. Municipal review and regulation

A. **Reviewing authority.** All requests for subdivision approval shall be reviewed by the municipal planning board, agency or office, or if none, by the municipal officers, hereinafter called the municipal reviewing authority.

B. **Regulations.** The municipal reviewing authority may, after a public hearing, adopt additional reasonable regulations governing subdivisions which shall control until amended, repealed or replaced by regulations adopted by the municipal legislative body. The municipal reviewing authority shall give at least 7 days' notice of such hearing.

C. **Record.** On all matters concerning subdivision review, the municipal reviewing authority shall maintain a permanent record of all its meetings, proceedings and correspondence.

D. **Hearing; order.** In the event that the municipal reviewing authority determines to hold a public hearing on an application for subdivision approval, it shall hold such hearing within 30 days of receipt by it of a completed application, and

(Title 30)

shall cause notice of the date, time and place of such hearing to be given to the person making the application and to be published in a newspaper of general circulation in the municipality in which the subdivision is proposed to be located, at least 2 times, the date of the first publication to be at least 7 days prior to the hearing.

The municipal reviewing authority shall, within 30 days of a public hearing or within 60 days of receiving a completed application, if no hearing is held, or within such other time limit as may be otherwise mutually agreed to, issue an order denying or granting approval of the proposed subdivision or granting approval upon such terms and conditions as it may deem advisable to satisfy the criteria listed in subsection 3 and to satisfy any other regulations adopted by the reviewing authority, and to protect and preserve the public's health, safety and general welfare. In all instances the burden of proof shall be upon the persons proposing the subdivisions. In issuing its decision, the reviewing authority shall make findings of fact establishing that the proposed subdivision does or does not meet the foregoing criteria.

**3. Guidelines.** When promulgating any subdivision regulations and when reviewing any subdivision for approval, the planning board, agency or office, or the municipal officers, shall consider the following criteria and before granting approval shall determine that the proposed subdivision:

**A.** Will not result in undue water or air pollution. In making this determination it shall at least consider: The elevation of land above sea level and its relation to the flood plains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable state and local health and water resources regulations;

**B.** Has sufficient water available for the reasonably foreseeable needs of the subdivision;

**C.** Will not cause an unreasonable burden on an existing water supply, if one is to be utilized;

**D.** Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result;

**E.** Will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads existing or proposed;

(Title 30)

**F.** Will provide for adequate sewage waste disposal;

**G.** Will not cause an unreasonable burden on the ability of a municipality to dispose of solid waste and sewage if municipal services are to be utilized;

**I.** Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas;

**J.** Is in conformance with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan, or land use plan, if any; and

**K.** The subdivider has adequate financial and technical capacity to meet the above stated standards.

**L.** Whenever situated, in whole or in part, within 250 feet of any pond, lake, river or tidal waters, will not adversely affect the quality of such body of water or unreasonably affect the shoreline of such body of water.

**4. Enforcement.** No person, firm, corporation or other legal entity may sell, lease, or convey for consideration, offer or agree to sell, lease or convey for consideration any land in a subdivision which has not been approved by the municipal reviewing authority of the municipality where the subdivision is located, and recorded in the proper registry of deeds. No subdivision plat or plan shall be recorded by any register of deeds which has not been approved as required. Approval for the purpose of recording shall appear in writing on the plat or plan. No public utility, water district, sanitary district or any utility company of any kind shall install services to any lot in a subdivision for which a plan has not been approved.

Any person, firm, corporation or other legal entity who sells, leases, or conveys for consideration, offers or agrees to sell, lease or convey for consideration any land in a subdivision which has not been approved as required by this section shall be punished by a fine of not more than \$1,000 for each such sale, lease or conveyance for consideration, offering or agreement. The Attorney General, the municipality or the appropriate municipal officers may institute proceedings to enforce the violation of this section.

**5. Exemptions.** This section shall not apply to proposed subdivisions approved by the planning board or the municipal officials prior to September 23, 1971 in accordance with laws then in effect nor

(Title 30)

shall they apply to subdivisions as defined by this section in actual existence on September 23, 1971 that did not require approval under prior law. The division of a tract or parcel by sale, gift, inheritance, lease or order of court into 3 or more lots and upon which lots permanent dwelling structures legally existed prior to September 23, 1971 is not a subdivision.

The owner of a lot which, at the time of its creation, was not part of a subdivision, shall not be required to secure the approval of the municipal reviewing authority for such a lot in the event that the subsequent actions of a prior owner, or his successor in interest, of the lot creates a subdivision of which the lot is a part, however, the municipal reviewing authority shall consider the existence of such a previously created lot in passing upon the application of any prior owner, or his successor in interest, of the lot for approval of a proposed subdivision.

## Minimum Lot Size

### Title 12

#### § 4807. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms shall have the following meanings.

1. **Multiple unit housing.** "Multiple unit housing" shall mean a structure or structures located on a single lot, which structures are designed or used to house 2 or more families.

2. **Other land use activity.** "Other land use activity" includes any commercial or industrial uses or combination of such uses.

3. **Person.** "Person" means any individual, corporation, firm, partnership, municipality, quasi-municipal corporation, state or federal agency or any other legal entity.

4. **Single family residential unit.** "Single family residential unit" means any structure of any kind, including mobile homes, used or designed to house a single family, and shall include those structures used permanently and seasonally.

5. **Subsurface waste disposal.** "Subsurface waste disposal" means any system for disposing of wastes or waste waters on or beneath the surface of the

(Title 12)

earth including, but not limited to, holding ponds, surface spraying, septic tanks, drainage fields and wells, but shall not include any discharge or the waste treatment system related thereto licensed under Title 38, section 413 or any discharge into a municipal or quasi-municipal sewer system.

6. **Waste.** "Waste" means any liquefied sewage, garbage, sewage sludge, chemical, biological or radiological materials, human body wastes, or any other refuse or effluent in a liquid form generated from domestic, commercial or industrial activities, except any wastes containing insufficient liquid to be free flowing and wastes generated from agricultural activities or animal husbandry.

#### § 4807-A. Minimum lot size required

In all areas of the State, notwithstanding any other provision of state or local law or regulation, no person shall:

1. Dispose of waste from any single family residential unit by means of subsurface waste disposal unless such lot of land on which such single family residential unit is located contains at least 20,000 square feet; and if the lot abuts a lake, pond, stream, river or tidal area, it shall further have a minimum frontage of 100 feet on such body of water;

2. Dispose of wastes by means of subsurface waste disposal from any multiple unit housing or any other land use activity which may generate wastes in excess of the waste disposal requirements of normal single family residential units, unless such multiple unit housing or other land use activity is located on a lot of a size and minimum frontage which is greater than the requirements stated in subsection 1 in the same proportion as the actual waste disposal requirements of the multiple unit housing or other land use activities is greater than that of a single family residential unit. For purposes of computing such proportions, the amount of sewage generated by and the waste disposal requirement of such activities or land uses shall be deemed to be:

A. Single family residential unit, 300 gallons per day;

B. Multiple unit housing, 120 gallons per bedroom;

C. Other land use activity, actual measurement or computation of waste generated or likely to be generated.

(Title 12)

**§ 4807-B. Approval of smaller lots**

A lot of less than the size required in section 4807-A may be used for subsurface waste disposal if approved in writing by the Board of Environmental Protection. Approval shall be granted if the applicant for approval demonstrates to the Board of Environmental Protection that, based upon the amount and nature of wastes, construction of the subsurface disposal system, soil types and slopes, percolation rates, depth to bedrock and groundwater, density of any proposed development, and other relevant factors, the proposed subsurface waste disposal will not lower the water quality of or otherwise pose a threat to any lake, pond, stream, river or tidal waters, any underground water supply, or to the public health, safety and general welfare.

**§ 4807-C. Approval of lesser frontage**

A lot of less than the frontage required in section 4807-A may be used for subsurface waste disposal if approved in writing by the Board of Environmental Protection. Approval shall be granted if the applicant for approval demonstrates to the board that such frontage will not cause such lot to be of such configuration as to prevent compliance with the standards in section 4807-B, or not otherwise present any harm to public health, safety or general welfare.

**§ 4807-D. Exemptions**

This chapter as to the use of a lot for single family residential purposes shall not apply to any lot which prior to January 1, 1970, was specifically described as an identifiable and separate lot either in the instrument conveying such lot to the then owner or in a valid and enforceable agreement for purchase and sale or was shown on a plan recorded in accordance with law, prior to January 1, 1970; provided that contiguous lots in the same ownership on or after October 3, 1973 shall be considered as one lot for the purposes hereof.

This chapter shall not apply to any structure in existence and in place on or before October 3, 1973, which then or theretofore disposed of wastes by means of subsurface waste disposal; except that no person shall reduce the size of the lot upon which such structure is located to a size or frontage less than that allowed by section 4807-A unless permitted pursuant to section 4807-B.

**§ 4807-E. Appeal**

Appeal shall be in the manner provided by Title 38, section 415.

(Title 12)

**§ 4807-G. Violations**

Any person who violates any provision of this chapter or the regulations enacted hereunder shall be subject to a fine of not more than \$1,000 for each offense or violation. Each day of such violation shall be considered a separate offense. Alternatively, and in addition thereto, any use of land in violation of this chapter shall be deemed to be a nuisance and the board may seek an injunction to prevent or abate a violation of this chapter or regulations promulgated thereunder.

**REGIONAL PLANNING**

**Regional Planning Commissions**

**Title 30**

**§ 1301. Membership in a regional planning commission**

A county may become a member of a regional planning commission by resolution of the county commissioners, provided that such membership is authorized by the commission's bylaws and all or part of the county is located within the regional planning and development district or subdistrict served by the commission.

**§ 4511. Establishment**

Any 7 or more municipalities, all of which are within one regional planning and development district and within one subdistrict if any, may by vote of their municipal officers join together to form a regional planning commission. The purpose of a regional planning commission shall be to promote cooperative efforts toward regional development, prepare and maintain a comprehensive regional plan, coordinate with state and federal planning and development programs and to provide planning assistance and advisory services to municipalities. In the preparation of a comprehensive plan, the public shall be given an adequate opportunity to be heard.

**§ 4512. Incorporation; powers**

Regional planning commissions shall be incorporated in accordance with Title 13, chapter 81, and shall possess all powers of a corporation organized without capital stock, except as limited by this subchapter.

**§ 4513. Representation**

The commission's governing body shall consist of representatives of each member municipality appointed by the municipal officers. Municipalities with less than 10,000 population as determined by the last Decennial Census shall have 2 representatives.

(Title 30)

Municipalities with populations greater than 10,000 as determined by the last Decennial Census shall have 2 representatives and an additional representative for each 10,000 increment in population or major part thereof over 10,000. At least one representative for each municipality shall be a municipal officer or the chief administrative official of the municipality or their designee, who shall serve at the pleasure of the municipal officers or until he ceases to hold municipal office. All other representatives shall serve for a term of 2 years and may be removed by the municipal officers for cause after notice and hearing. A permanent vacancy shall be filled for the unexpired term in the same manner as a regular appointment.

A regional planning commission may, in its bylaws, provide for voting membership of one or more counties within its regional planning and development district or subdistrict. A county shall have no more than 2 representatives. The commission may by bylaw provide for one alternate representative for each member municipality or county.

§ 4514. Bylaws; records

The commission shall adopt bylaws not inconsistent with this subchapter, designating the officers of the commission and providing for the conduct of its business.

The minutes of the proceedings of the commission shall be filed in the office of the commission and shall be public record. Copies shall be provided to the municipal officers and planning board of each member municipality.

§ 4515. Finances

The commission shall prepare an annual budget and shall determine on an equitable basis the contribution of each member municipality toward the support of the commission.

The commission may accept funds, grants, gifts and services from the government of the United States or its agencies, from the State or its departments, agencies or instrumentalities, from any other governmental unit, whether a member or not, and from private and civic sources.

§ 4516. Staff services

To avoid duplication of staffs for various regional bodies assisted by the Federal Government, a commission may provide basic administrative and research and planning services for any regional development and planning bodies presently or hereafter established in Maine.

Regional Planning and Development Districts

Title 30

§ 4521. Regional planning and development districts

1. **Districts.** The Governor may designate regional planning and development districts and subdistricts for the purpose of coordinating policies, plans and programs among and within the various levels of government affecting the development of those districts or subdistricts.

2. **Revisions.** The Governor may, after consultation with the State Planning Office, regional planning commissions and the officers of the municipalities and counties involved, revise the district boundaries to reflect changing conditions or otherwise to fulfill the purposes of this chapter.

3. **Agreements.** The Governor may enter into agreements on behalf of the State with the governor of an adjoining state or with the consent of the United States Congress, with the premier of an adjoining province of Canada to establish interstate or international regional planning or development districts.

§ 4522. Planning and Program Review

1. **Review authority.** The Governor may designate a regional planning commission as the authorized agency to receive, review and comment on federal projects and plans affecting regional planning, coordination and development and those significant local and state projects that exceed \$200,000 in total cost and those state projects involving more than one municipality.

A. Where 2 or more contiguous regional planning commissions are affected, the following shall hold:

(1) When it is determined by the State Planning Office that a project clearly concerns the jurisdictional area of only one regional planning commission, that commission shall be the authorized review agency;

(2) When a project clearly concerns the jurisdictional area of 2 or more commissions as determined by the State Planning Office, joint receipt and review and comment shall be required.

B. When a project clearly concerns both incorporated and unincorporated areas within a district, there shall be joint receipt and review and comment by the affected regional planning commission or commissions and the Maine Land Use Regulation Commission.

(Title 30)

C. All regional planning commission review pursuant to this subsection shall be completed within 30 days after receipt of the project information unless agreed by the requesting agency that this period be extended.

2. Planning review of federal program grant application. All applications for federal program grants affecting regional planning, coordination and development, including programs pursuant to Section 204 of the Federal Demonstration Cities and Metropolitan Development Act of 1966 and the Federal Intergovernmental Cooperation Act of 1968 and the objectives set forth in the Federal Office of Management and Budget Circular A-95, shall be submitted to the commission for review and comment and the provisions of subsection 5 shall apply.

3. Planning review of state agency long-term plans. Each state department, commission, board or agency will submit to the commission, for review and comment, all long-term comprehensive plans that will have significant regional effect within its jurisdiction. The planning commission review shall be completed within 30 days after receipt of such long-term comprehensive plan. Where 2 or more regional planning commissions coexist within a district, subsection 1 shall apply.

4. Planning review of local government and special district plans and programs. Each city, town, watershed district and soil conservation district, all or part of which lies within jurisdictional area of the commission, shall submit to the commission, for comment and recommendation thereon, its long-term comprehensive plans or any matter which in the judgment of the commission has a substantial effect on regional development, including but not limited to plans for land use. No action shall be taken to institute any such plan or part thereof for 30 days after all the relevant information has been submitted to the regional planning commission for review and comment. The commission shall notify each city or town or special district which may be affected by the plans submitted of the general nature of the plan, the date of submission and the identity of the submitting unit. The commission may conduct a hearing on the submitted plans if, in the opinion of the commission, such a hearing would be in the best interest of the region.

5. Review of applications for state-aid programs. Within each planning and development district or subdistrict in which a regional planning commission has been organized, the governing body of each governmental unit and special district shall submit to the regional planning commission for review any applications to state agencies for loans or grants-in-

(Title 30)

aid before such application is made. The regional planning commission shall determine whether or not the proposed application is properly coordinated with other existing or proposed projects within the district, as well as any district plans or policies where such exist. In making such a determination, the commission shall within 30 days inform both the applicant agency and the granting authority of its opinion.

6. Referral of proposals for interlocal agreements or formation of special purpose districts. Before any 2 or more municipalities may join together through interlocal agreement or formation of a special purpose district under any provisions of the Revised Statutes or any special act for purposes of jointly developing or operating physical facilities and services for the performance of municipal or regional functions, such municipalities shall refer such proposal to the regional planning commission or commissions within whose areas of jurisdiction the municipalities may be located. The commission or commissions shall, within 30 days, render an advisory report of the regional significance of the proposal, unless agreed by the referring municipalities that this period be extended.

7. Notice to regional planning commission to establish or change land use zones. When a municipality proposes to establish or change a land use zone or any regulation affecting the use of a zone any portion of which is within 500 feet of the boundary of another municipality located within the jurisdiction of a regional planning commission, the municipality shall give written notice of its public hearing to be held in relation thereto. The commission shall study such proposal and shall report its findings and recommendations thereon to the municipality at or before the hearing. If such an advisory report of the commission is not submitted at or before the hearing, it shall constitute approval.

8. Local assistance.

A. The commission may make recommendations on the basis of its plans and studies to local planning boards or to the municipal officers of any member, and to any county, state or federal authorities.

B. A municipal planning board may use any part of the regional planning studies which pertain to the municipality in its own comprehensive plan.

C. The commission may assist any of its members in solving a local planning problem. All or part of the cost of local assistance may be paid by any of its members.

(Title 30)

**§ 4523. Councils of Government**

For the purpose of this subchapter, regional planning commission shall also mean councils of government established pursuant to chapter 204.

**Sec. 5. Transition provisions.** Existing regional planning commissions shall incorporate within 2 years of the effective date of this Act, and shall provide representation and otherwise comply with the Revised Statutes, Title 30, chapter 239, subchapter 1-B, within one year of the effective date of this Act.

**Councils of Governments**

**Title 30**

**§ 1981. Establishment**

The municipal officers of any 2 or more municipalities by appropriate action, may enter into an agreement, between or among such municipalities, for the establishment of a regional council of governments.

**§ 1982. Contents of agreement**

The agreement shall provide for representation, provided that at least half of the representatives of each member shall be municipal officers. The agreement shall specify the organization, the method of withdrawal, the method of terminating the agreement and the grounds for suspension of member municipalities.

**§ 1983. Powers and Duties**

**1. Powers.** The council shall have the power to:

**A.** Study such area governmental problems common to 2 or more members of the council as it deems appropriate, including but not limited to matters affecting health, safety, welfare, education, economic conditions and regional development;

**B.** Promote cooperative arrangements and coordinate action among its members; and

**C.** Make recommendations for review and action to its members and other public agencies that perform functions within the region.

**2. —other.** The council may, by appropriate action of the governing bodies of the member municipalities, exercise such other powers as are exercised or capable of exercise separately or jointly, by

(Title 30)

the member governments and necessary or desirable for dealing with problems of local concern.

**3. Standing Committee.** The council may, by appropriate action of the governing bodies of the member municipalities, establish a standing committee for the purpose of preparing and maintaining a comprehensive regional plan.

**4. Transfer.** Where a regional planning commission has been established under chapter 239, subchapter 1, the member municipalities, by appropriate action may provide for the transfer of all assets, liabilities, rights and obligations of the commission to the council and for the dissolution of the commission.

**§ 1984. Bylaws**

The council shall adopt bylaws designating the officers of the council and providing for the conduct of its business.

**§ 1985. Staff**

The council may employ such staff, and consult and retain such experts, as it deems necessary.

**§ 1986. Finances: annual report**

**1. Expenses.** The governing bodies of the member governments may appropriate funds to meet the expenses of the council. Services of personnel, use of equipment and office space, and other necessary services may be accepted from members as part of their financial support.

**2. Government funds.** The council may accept funds, grants, gifts and services from the government of the United States or its agencies, from this State or its departments, agencies or instrumentalities or from any other governmental unit whether participating in the council or not, and from private and civic sources.

**3. Report.** It shall make an annual report of its activities to the member governments.



## RELATED LEGISLATION

### Site Location Act

#### Title 38

(note: whenever in the Revised Statutes the words "Environmental Improvement Commission" appear they shall mean the "Board of Environmental Protection").

#### § 481. Findings and purpose

The Legislature finds that the economic and social wellbeing of the citizens of the State of Maine depend upon the location of state, municipal, quasi-municipal, educational, charitable, commercial and industrial developments with respect to the natural environment of the State; that many developments because of their size and nature are capable of causing irreparable damage to the people and the environment in their surroundings; that the location of such developments is too important to be left only to the determination of the owners of such developments; and that discretion must be vested in state authority to regulate the location of developments which may substantially affect environment.

The purpose of this subchapter is to provide a flexible and practical means by which the State, acting through the Environmental Improvement Commission, in consultation with appropriate state agencies, may exercise the police power of the State to control the location of those developments substantially affecting local environment in order to insure that such developments will be located in a manner which will have a minimal adverse impact on the natural environment of their surroundings.

#### § 482. Definitions

As used in this subchapter:

1. **Commission.** "Commission" means the Environmental Improvement Commission.

2. **Development which may substantially affect the environment.** "Development which may substantially affect the environment," in this Article called "development," means any state, municipal, quasi-municipal, educational, charitable, commercial or industrial development, including subdivisions, but excluding state highways and state aid highways, which requires a license from the commission, or which occupies a land or water area in excess of 20 acres, or which contemplates drilling for or excavating natural resources, on land or under water, excluding borrow pits for sand, fill or gravel, regulated by the State Highway Commission and pits of less than 5 acres, or which occupies on a single parcel a structure or structures in excess of a ground area of 60,000 square feet.

(Title 38)

3. **Natural environment of a locality.** "Natural environment of a locality" includes the character, quality and uses of land, air and waters in the area likely to be affected by such development, and the degree to which such land, air and waters are free from non-naturally occurring contamination.

4. **Person.** "Person" means any person, firm, association, partnership, corporation, municipal or other local governmental entity, quasi-municipal entity, state agency, educational or charitable organization or institution or other legal entity.

5. **Subdivision.** A "subdivision" is the division of a parcel of land into 5 or more lots, any one of which is less than 10 acres in size, if said lots make up an aggregate land area of more than 20 acres and are to be offered for sale or lease to the general public during any 5-year period.

#### § 483. Notification required; commission action; administrative appeals

Any person intending to construct or operate a development shall, before commencing construction or operation, notify the commission in writing of his intent and of the nature and location of such development, together with such information as the commission may by regulation require. The commission shall within 30 days of receipt of such notification, either approve the proposed development, upon such terms and conditions as are appropriate and reasonable, or disapprove the proposed development setting forth the reasons therefor or schedule a hearing thereon in the manner hereinafter provided.

Any person as to whose development the commission has issued an order without a hearing may request, in writing, within 30 days after notice, a hearing before the commission. Such request shall set forth, in detail, the findings and conclusions of the commission to which such person objects, the basis of such objections and the nature of the relief requested. Upon receipt of such request, the commission shall schedule and hold a hearing limited to the matters set forth in such request. Such hearing shall be scheduled in accordance with section 484.

#### § 484. Hearings; orders; construction suspended

In the event that the commission determines to hold a hearing on a notification submitted to it pursuant to section 483, it shall hold such hearing within 30 days of such determination, and shall cause notice of the date, time and place thereof to be given to the person intending the development and in addition shall give public notice thereof by causing such notice to be published in some newspaper of general

(Title 38)

circulation in the proposed locality, or if none, in the state paper; the date of the first publication to be at least 10, and the last publication to be at least 3, days before the date of the hearing.

At such hearing the commission shall solicit and receive testimony to determine whether such development will in fact substantially affect the environment or pose a threat to the public's health, safety or general welfare.

The commission shall approve a development proposal whenever it finds that:

1. **Financial capacity.** The developer has the financial capacity and technical ability to meet state air and water pollution control standards, and has made adequate provision for solid waste disposal, the control of offensive odors, and the securing and maintenance of sufficient and healthful water supplies.

2. **Traffic movement.** The developer has made adequate provision for traffic movement of all types out of or into the development area.

3. **No adverse effect on the natural environment.** The developer has made adequate provision for fitting the development harmoniously into the existing natural environment and that the development will not adversely affect existing uses, scenic character, or natural resources in the municipality or in neighboring municipalities.

4. **Soil types.** The proposed development will be built on soil types which are suitable to the nature of the undertaking.

In case of a permanently installed power generating facility of more than 1,000 kilowatts or a transmission line carrying 125 kilovolts or more proposed to be erected within this State by an electrical company or companies, the proposed development, in addition to meeting the requirements of subsections 1 to 4, shall also have been approved by the Public Utilities Commission under Title 35, section 13-A.

At hearings held under this section the burden shall be upon the person proposing the development to affirmatively demonstrate to the commission that each of the criteria for approval listed in the preceding paragraphs have been met, and that the public's health, safety and general welfare will be adequately protected.

Within 30 days after the commission adjourns any hearing held under this section, it shall make findings of fact and issue an order granting or denying

(Title 38)

permission to the person proposing such development to construct or operate the same as proposed, or granting such permission upon such terms and conditions as the commission may deem advisable to protect and preserve the environment and the public's health, safety and general welfare.

Any person who has notified the commission, pursuant to section 483, of his intent to construct or operate a development shall immediately defer or suspend construction or operation with respect to such development until the commission has issued its order.

Any person securing approval of the commission, pursuant to this Article, shall maintain the financial capacity and technical ability to meet the state air and water pollution control standards until he has complied with such standards.

**§ 485. Failure to notify commission; hearing; Injunction; orders**

The commission may at any time with respect to any person who has commenced construction or operation of any development without having first notified the commission pursuant to section 483, schedule and conduct a public hearing in the manner provided by section 484 with respect to such development.

The commission may request the Attorney General to enjoin any person, who has commenced construction or operation of any development without having first notified the commission pursuant to section 483, from further construction or operation pending such hearing and order. Within 30 days of such request the Attorney General shall bring an appropriate civil action.

In the event that the commission shall issue an order, denying a person commencing construction or operation of any development without first having notified the commission pursuant to section 483, permission to continue such construction or operation, it may further order such person to restore the area affected by such construction or operation to its condition prior thereto or as near as may be, to the satisfaction of the commission.

**§ 486. Enforcement**

All orders issued by the commission under this subchapter shall be enforced by the Attorney General. If compliance with any order of the commission is not had within the time period therein specified, the commission shall immediately notify the Attorney General of this fact. Within 30 days thereafter the Attorney General shall bring an appropriate civil action designed to secure compliance with such order.

(Title 38)

**§ 487. Judicial review**

Any person aggrieved by any order of the Board of Environmental Protection, pursuant to this Article may within 30 days after notice of such order, appeal therefrom to the Supreme Judicial Court pursuant to the provisions of Rule 73 (f) of the Maine Rules of Civil Procedure. The proceedings shall not be de novo. Review shall be limited to the application, the record of any hearing before and the order of the board. The court shall decide whether the board acted regularly and within the scope of its authority, and whether the order is supported by substantial evidence, and on the basis of such decision may enter judgment affirming or nullifying such determination.

**§ 488. Applicability**

This Article shall not apply to any development in existence or in possession of applicable state or local licenses to operate or under construction on January 1, 1970 or to any development the construction and operation of which has been specifically authorized by the Legislature prior to May 9, 1970, or to public service corporation transmission lines, except transmission lines carrying 125 kilovolts or more, nor shall it apply to the renewal or revision of leases of parcels of land upon which a structure or structures have been located as of March 15, 1972.

**Coastal Wetlands**

**Title 12**

(note: wherever in the Revised Statutes the words "Wetlands Control Board" appear they shall mean "Board of Environmental Protection").

**§ 4701. Procedure; hearing**

No person, agency or municipality shall remove, fill, dredge, or otherwise alter any coastal wetland, or drain or deposit sanitary sewage into or on any coastal wetland, as defined herein, without first obtaining a valid permit. Application for permit, by written notice of intent to alter coastal wetlands, including such plans as may be necessary to describe the proposed activity, shall be filed with the municipal officers in the municipality affected and with the Wetlands Control Board. Such notice shall be sent to each body by registered mail at least 60 days before such alteration is proposed to commence. The municipal officers shall hold a public hearing on the proposal within 30 days of receipt of the notice and shall notify by mail the applicant, the Wetlands Control Board, abutting owners and the public by publication in a newspaper published in the county

(Title 12)

where the wetlands are located, of the time and place of such hearing.

For purposes of this chapter, coastal wetland is defined as any swamp, marsh, bog, beach, flat or other contiguous lowland above extreme low water which is subject to tidal action or normal storm flowage at any time excepting periods of maximum storm activity.

When winter conditions prevent a municipality or the Wetlands Control Board from evaluating a permit application, the municipality or board upon notifying the applicant of such fact may defer action on the application for up to 120 days. The applicant shall not during the period of deferral remove, fill, dredge, drain, or deposit sanitary sewage into, or otherwise alter such coastal wetland.

The results of the public hearing shall be reported to the Wetlands Control Board by the municipal officers within 7 days of such hearing.

Each such application for permit filed with the municipality shall be accompanied by a permit fee to be determined by the municipality to cover the administrative and advertising costs of the municipality in processing the permit application.

**§ 4702. Permits**

Permit to undertake the proposed alteration shall be issued by the municipal officers within 20 days of such hearing providing both the municipality and the Wetlands Control Board approve. Such permit may be conditioned upon the applicant amending his proposal to take whatever measures are deemed necessary by either the municipality or the Wetlands Control Board to protect the public interest. Approval may be withheld by either the municipal officers or the board when in the opinion of either body the proposal would threaten the public safety, health or welfare, would adversely affect the value or enjoyment of the property of abutting owners, or would be damaging to the conservation of public or private water supplies or of wildlife or freshwater, estuarine or marine fisheries.

Every permit issued by municipal officers shall be recorded by the owner in the registry of deeds for the county in which the wetland lies. Any permit not recorded within 30 days of its issuance shall be void. All permits issued under this chapter shall expire 3 years from the date of issuance.

(Title 12)

§ 4703. Unorganized territory; 2 or more municipalities

In the event that the activity is proposed within an unorganized township, the county commissioners shall act in the place of municipal officers. In the event that the activity is proposed in 2 or more municipalities, the respective municipal officers shall act concurrently.

§ 4704. Appeal

Appeal may be taken to the Superior Court within 30 days after the denial of a permit or the issuance of a conditional permit for the purpose of determining whether the action appealed from so restricts the use of the property as to deprive the owner of the reasonable use thereof or which constitutes the equivalent of a taking without compensation.

§ 4706. Application

Section 4701 shall not apply to any alteration of wetlands undertaken as a bona fide emergency action providing that the person undertaking such action notifies the municipal officers and the Wetlands Control Board within 3 days of commencing such action, and providing that such action does not result in permanent alteration unless authorization be obtained pursuant to section 4701.

§ 4707. Exemptions

The Wetlands Control Board may by rule or regulation exempt from this chapter such activity or activities or waive such procedural requirements as it deems not inconsistent with the purposes of this chapter.

§ 4708. Exception

Nothing in this chapter shall prohibit the normal maintenance or repair of presently existing ways, roads or railroad beds nor maintenance and repair of installations and facilities of any utility as defined in Title 23, section 255, abutting or crossing said wetlands, provided no watercourse is substantially altered.

§ 4709. Violation

Whoever violates or causes a violation of any provision of this chapter shall be punished by a fine of not more than \$500.

The Superior Court shall also have jurisdiction to restrain a continuing violation of this chapter at the suit of any person and, if necessary, to preserve any of the values and purposes for which this chapter was passed, as outlined in section 4702, shall order a restoration of the affected area to as near its orig-

(Title 12)

inal condition as possible; said restoration to be undertaken and costs borne by the property owner.

A violation is defined as any filling, dredging, draining, depositing, altering or removal of materials which takes place in coastal wetlands contrary to the provisions of a valid permit or without a permit having been issued, and without regard to whether these physical acts were witnessed as they were being carried out or whether the action was willfully undertaken to avoid the intent of this chapter or only innocently undertaken. Any such filling, dredging, draining, depositing, altering or removal of materials shall be prima facie evidence that it was done or caused to be done by the owner of such wetlands.

Inland fish and game wardens, coastal wardens and all other law enforcement officers enumerated in Section 2003, shall enforce this chapter.

(Subch. II Zoning)

§ 4751. Purpose

The purpose of this subchapter is the promotion of the public safety, health and welfare, the protection of public and private property and the conservation of public or private water supplies, wildlife and freshwater, estuarine and marine fisheries.

§ 4752. Definition

For the purposes of this subchapter, "coastal wetlands" are as defined in section 4701.

§ 4753. Administration

This subchapter shall be administered by the Board of Environmental Protection.

§ 4754. Orders

The board may, from time to time, for the purposes of this subchapter, adopt, amend, modify or repeal orders regulating, restricting or prohibiting dredging, filling, removing or otherwise altering any coastal wetland, or draining or depositing sanitary sewage into or on any coastal wetland, or otherwise polluting the same.

§ 4755. Hearing

The board, before adopting, amending, modifying or repealing any such order, shall hold a public hearing thereon in the municipality in which the coastal wetlands to be affected are located, and shall give notice by mail to the municipal officers of such municipalities and to each assessed owner of such wetlands, and to the Department of Transportation at least 21 days prior thereto, and to the public by publication in a newspaper published in the county

(Title 12)

where the wetlands are located, of the time and place of such hearing.

§ 4756. Recording

Upon the adoption of any such order or any order amending, modifying or repealing the same, the board shall cause a copy thereof, together with a plan of the wetlands affected and a list of the assessed owners of such wetlands to be recorded in the registry of deeds for the county in which such wetlands are located, and shall mail a copy of such order and plan to each assessed owner of such wetlands affected thereby, by registered or certified mail, return receipt requested.

§ 4757. Appeal procedure

Any person having a recorded interest in wetlands affected by any such order of the board may, within 90 days after notice thereof, appeal to the Superior Court for the county in which the wetland is situated for the purpose of determining whether such order so restricts the use of the property as to deprive the owner of the reasonable use thereof or constitutes the equivalent of a taking without compensation. If the court so finds, it shall enter a decree that such order shall not apply to the wetland of the appellant, provided that such decree shall not affect any wetland other than that of the appellant. The appeal shall be the exclusive method of determining the validity of said order of the board. Any decree that such order constitutes the equivalent of a taking without compensation shall not entitle the appellant or any other person to petition for the assessment of damages by reason of the adoption of such order.

The board shall cause a copy of such decree to be recorded in the registry of deeds for the county in which the wetland is situated. After a decree has been entered providing that any such order of the board shall not apply to the wetland involved in the appeal, the board may, after causing an appraisal to be made, negotiate for the purchase of such wetland, if it deems that acquisition of the same is necessary for the purposes of section 4702 or 4751. If purchase, or a written agreement therefor, has not been effected within 60 days after negotiations have begun, and the board determines that an emergency situation exists which would cause an immediate threat to the public safety, health and welfare, to the protection of public or private property, or to public or private salt water supplies, or to the conservation of wildlife or freshwater estuarine or marine fisheries, the board shall declare that the public exigency requires the taking of such wetland, and, with the consent of the Governor and Council, may acquire in behalf of the State the fee of such wetland or any lesser interest therein by eminent do-

(Title 12)

main, the proceedings for such taking to be in accordance with Title 35, chapter 263.

Such wetlands or lesser interests therein, so taken, shall thereupon be under the jurisdiction and control of the board which shall hold the same for the purposes of this subchapter and issue rules and regulations governing the use thereof.

Any violation of such rules and regulations shall be punishable by a fine of not more than \$100.

§ 4758. Violation; penalty

Whoever violates or causes a violation of any such order of the board or of any provision of this subchapter, shall be punished by a fine of not more than \$500.

The Superior Court shall have jurisdiction to restrain a continuing violation of any such order or of any provision of this subchapter at the suit of any person and, if necessary to preserve any of the values and purposes for which this subchapter was passed, shall order a restoration of the affected area to as near its original condition as possible, said restoration to be undertaken and costs borne by the property owner.

Dredging, Discharging

Title 38

§ 417. Certain deposits and discharges prohibited

No person, firm, corporation or other legal entity shall place, deposit or discharge, directly or indirectly into the inland waters or tidal waters of this State, or on the ice thereof, or on the banks thereof in such a manner that the same may fall or be washed into such waters, or in such manner that the drainage therefrom may flow or leach into such waters, any of the following, except as otherwise provided by law:

A. Forest products refuse. Any slabs, edgings, sawdust, shavings, chips, bark or other forest products refuse;

B. Potatoes. Any potatoes or any part or parts thereof;

C. Refuse. Any scrap metal, junk, paper, garbage, septic tank sludge, rubbish, old automobiles or similar refuse.

§ 422. Dredging permits

The Board of Environmental Protection may grant permits for construction and maintenance of causeways, bridges, marinas, wharves and permanent

(Title 38)

structures, or deposit of fill, in, on, or abutting on great ponds or for dredging in great ponds.

The board may, pursuant to the Administrative Code, adopt, amend and repeal such regulations, establish such hearing procedures and charge such fees as it deems necessary to properly administer this section. Fees collected shall accrue to the board and shall be expended by it for expenses incurred in carrying out its duties, prescribed by this section.

If the applicant for the permit demonstrates that the proposed activity will not unreasonably interfere with existing recreational, navigational, scenic and aesthetic uses; nor otherwise unreasonably interfere with or harm the natural environs of the great pond or tributary, river or stream; nor cause unreasonable soil erosion; nor unreasonably interfere with the natural flow of any waters; nor create or cause to be created unreasonable noise or traffic of any nature; nor unreasonably harm any fish or wildlife habitat; nor lower the quality of any waters, to the satisfaction of the board, the board shall grant the permit upon such terms as it deems necessary to insure that the proposed activity will comply with the foregoing standards.

Any individual person, firm, corporation, municipality, state agency or other legal entity who dredges or removes or causes to be dredged or removed any materials from, or who erects, maintains or causes to be erected or maintained any causeway, bridge, marina, wharf, dock or permanent structure, or deposits fill, in, on, over or abutting on any great pond without a permit from the board as provided in this section shall be punished by a fine of not less than \$100 nor more than \$200 for each day of such violation.

In the event of the violation of this section, the Attorney General may institute proceedings to enjoin further violations and to compel restoration of the affected area to its condition prior to the occurrence of the violation.

For the purposes of this section "great pond" shall include any inland body of water which in its natural state has a surface area in excess of 10 acres, and any body of water artificially formed or increased which has a surface area in excess of 30 acres, the shore of which is owned by 2 or more persons, firms, corporations or other legal entities.

### **Dam Building, Stream Bulldozing**

#### **Title 12**

(from the laws relating to, and administered by, the Dept. of Inland Fisheries and Game)

(Title 12)

#### **§ 2203. Notice to commissioner of building of dam**

No person shall build any dam or other obstruction in any of the rivers, streams or brooks of this State without first filing written notice with the commissioner.

#### **§ 2205. Bulldozing of rivers, streams and brooks**

Whoever bulldozes, causes to be bulldozed, fills or dredges between the banks of a river, stream or brook capable of floating watercraft, without first obtaining permission from the commissioner, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$100 nor more than \$1,000. This section shall not apply to river, stream or brook crossings in connection with public works projects which shall alter not more than 200 feet of shore nor to private crossing or dam projects which shall not alter more than 100 feet of shore.

### **ALTERATION OF RIVERS, STREAMS AND BROOKS**

#### **§ 2206. Prohibitions**

No individual person, firm, corporation, municipality, state agency or other legal entity shall dredge or cause to be dredged, fill or cause to be filled, or erect or cause to be erected a causeway, bridge, marina, wharf, dock or other permanent structure, in, on, over or abutting any river, stream or brook without first obtaining a permit therefor from the commissioner.

#### **§ 2207. Permits; standards**

If the applicant for the permit demonstrates to the satisfaction of the commissioner that the proposed activity will not unreasonably interfere with existing recreational and navigational uses; nor cause unreasonable soil erosion; nor unreasonably interfere with the natural flow of any waters; nor unreasonably harm any fish habitat or wildlife habitat; nor lower the quality of any waters, the commissioner shall grant the permit upon such terms as he deems necessary to insure that the proposed activity will comply with the foregoing standards.

In the event the river, stream or brook is utilized by a water company, a municipality or a water district as a source of supply, the applicant for the permit shall at the time of filing an application forward a copy of the application to the water company or water district by certified mail.

(Title 12)

§ 2208. Hearings; appeals

In the event that an application for a permit is denied, or that it is granted upon terms objectionable to the applicant, the applicant may, within 30 days of receipt of notice of such decision, file a notice of appeal with the commissioner. The commissioner may then, within 30 days of receipt of such notice of appeal, provide the applicant with the opportunity for a hearing which shall be before him or his designee, and of which a transcript shall be made. Any person aggrieved by an order or decision of the commissioner following such hearing may, within 30 days of receipt of notice of such decision, appeal therefrom to the Superior Court by filing a notice of appeal stating the points of appeal. Such appeal shall be heard by the court without a jury in the manner and with the rights provided by law in other civil actions so heard. The proceedings shall not be de novo. The court shall receive into evidence true copies of the transcript of the hearing, the exhibits thereto and the decision of the commissioner. The court's review shall be limited to questions of law and whether the commissioner acted regularly and within the scope of his authority and the commissioner's decision shall be final so long as supported by substantial evidence. The court may affirm, reverse or remand the commissioner's decision for further proceedings. Appeals from all other orders or decisions of the commissioner, unless otherwise specified by statute, shall be taken pursuant to the Maine Rules of Civil Procedure, Rule 80B.

§ 2209. Administration

The commissioner may, pursuant to the Administrative Code and based upon the standards provided in section 2207, adopt, amend and repeal such regulations, establish such hearing procedures and charge such fees as he deems necessary to properly administer this subchapter. Fees collected shall accrue to the department and shall be expended by it for expenses in carrying out its duties prescribed by this subchapter.

§ 2210. Penalties

Any individual person, firm, corporation, municipality, state agency or other legal entity who dredges or causes to be dredged, fills or causes to be filled or erects or causes to be erected any causeway, bridge, marina, wharf, dock or other permanent structure in, on, over or abutting any river, stream or brook without a permit from the commissioner shall be punished by a fine of not less than \$100 nor more than \$200 for each day of such violation.

(Title 12)

§ 2211. Injunction; restoration

In the event of the violation of this subchapter, the Attorney General may institute proceedings to enjoin further violations and to compel restoration of the affected area to its condition prior to the occurrence of the violation.

§ 2212. Exemptions

This subchapter shall not apply to river, stream or brook crossings in connection with public works projects which shall alter not more than a total of 100 feet in any mile of shore nor to private crossing or dam projects which shall alter not more than a total of 300 feet in any mile of shore. Alterations to both shores of the river, stream or brook shall be combined in arriving at a total shore footage.

This subchapter shall not apply to emergency repairs, maintenance of railroad structures, track, or roadbed within the located right-of-way of any railroad.

Sec. 2. Application. Chapter 84 of the Resolves of 1973, relative to authorizing the Town of Bingham to remove sand bars at confluence of Austin Stream and Kennebec River, shall be exempt from the provisions of the Act for the duration of the town's authority.

Nuisances

Title 17

§ 2802. Miscellaneous nuisances

The erection, continuance or use of any building or place for the exercise of a trade, employment or manufacture which, by noxious exhalations, offensive smells or other annoyances, becomes injurious and dangerous to the health, comfort or property of individuals, or of the public; causing or permitting abandoned wells or tin mining shafts to remain unfilled or uncovered to the injury or prejudice of others; causing or suffering any offal, filth or noisome substance to collect, or to remain in any place to the prejudice of others; obstructing or impeding, without legal authority, the passage of any navigable river, harbor or collection of water; corrupting or rendering unwholesome or impure the water of a river, stream or pond; unlawfully diverting it from its natural course or state, to the injury or prejudice of others; and the obstructing or encumbering by fences, buildings or otherwise, of highways, private ways, streets, alleys, commons, common landing places or burying grounds are nuisances within the

(Title 17)

limitations and exceptions mentioned. Any places where one or more old, discarded, worn out or junked motor vehicles as defined in Title 29, section 1, subsection 7, or parts thereof, are gathered together, kept, deposited or allowed to accumulate, in such manner or in such location or situation, either within or without the limits of any highway, as to be unsightly, detracting from the natural scenery or injurious to the comfort and happiness of individuals and the public, and injurious to property rights, are declared to be public nuisances.

## ADDITIONAL LEGISLATION

Laws relating to, and administered by, the Department of Environmental Protection, as portrayed in a series of pamphlets (pamphlet titles have been adapted for ease of reference):

1. *Department of Environmental Protection*  
Title 38 M.R.S.A. Sec. 341-2, 361-3, 366, 372, 415, 419, 454
2. *Site Selection Act*  
Title 38 M.R.S.A. Sec. 481-8
3. *Water Pollution*  
Title 38 M.R.S.A. Sec. 361-A, 365, 367, 411-20, 423, 451-4
4. *Classification of Waters*  
Title 38 M.R.S.A. Sec. 363-4, 368-9, 370-71
5. *Great Ponds Program*  
Title 38 M.R.S.A. Sec. 380-85
6. *Minimum Lot Size, Mandatory Shoreland Zoning, Dredging Permits*  
Title 12 M.R.S.A. Sec. 4807-4807-G  
Title 12 M.R.S.A. Sec. 4811-14  
Title 38 M.R.S.A. Sec. 422
7. *Wetlands*  
Title 12 M.R.S.A. Sec. 4701-04, 4706-09, 4751-8
8. *Solid Waste*  
Title 38 M.R.S.A. Sec. 417, 421, 1301-08  
Title 30 M.R.S.A. Sec. 4104-05
9. *Sanitary District Enabling Act*  
Title 38 M.R.S.A. Sec. 1551-66
10. *Oil Discharge Prevention*  
Title 38 M.R.S.A. Sec. 532-57
11. *Mining and the Rehabilitation of Land*  
Title 10 M.R.S.A. Sec. 2201-18
12. *Sewage Treatment Operators*  
Title 32 M.R.S.A. Sec. 4172-82



Laws relating to, and administered by, the Maine Bureau of Forestry:

1. *Dumps, Fire Prevention Measures*  
Title 12 M.R.S.A. Sec. 1351-5
2. *Roadside Harvesting Prohibitions*  
Title 12 M.R.S.A. Sec. 519
3. *Slash Disposal*  
Title 12 M.R.S.A. Sec. 1551-5
4. *Maine Coastal Island Registry*  
Title 33 M.R.S.A. Sec. 1201-17

Rules and Regulations of the Maine Department of Health and Welfare, available in pamphlet form:

1. *State Plumbing Code*
2. *Private Sewage Bulletin* (extract from State Plumbing Code with explanatory material)
3. *Rules and Regulations relating to recreational and overnight camps*
4. *Rules and Regulations relating to mobile home parks and camping areas*

Publications available from the Maine Municipal Association:

1. *Municipal Laws*, 1973 edition (price, \$10 to non-members) contains all of Title 30 and selections from other titles

# STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-FOUR

H. P. 1977 — L. D. 2518

## AN ACT Establishing a State Register of Critical Areas.

*Be it enacted by the People of the State of Maine, as follows:*

Sec. 1. R. S., T. 5, c. 312, additional. Title 5 of the Revised Statutes is amended by adding a new chapter 312 to read as follows:

### CHAPTER 312

#### STATE REGISTER OF CRITICAL AREAS

##### § 3310. Title

This chapter shall be known and may be cited as the "Act for a State Register of Critical Areas."

##### § 3311. Findings; declaration of purpose

The Legislature finds that the State of Maine has an overriding interest in the optimum development and preservation of certain land and water areas of the State. It is hereby found and determined that sites or areas of unusual natural, scenic, scientific or historical significance are areas of such overriding state interest. It shall be the policy of the State to encourage the preservation and utilization of these areas through land use planning, regulation and protective acquisition or management as appropriate, commensurate with controlled economic growth and development. These areas of unusual natural, scenic, scientific or historical interest should be inventoried to facilitate their preservation for present and future generations. This task has been begun by certain state agencies, as well as private groups. The Legislature directs that a state-wide inventory and an official, authoritative listing of such natural, scenic, scientific and historical areas of overriding state interest be made by the State Planning Office as part of its overall responsibility for comprehensive state-wide planning and coordination of the planning and conservation efforts of state and local agencies. The official listing shall be known as the "Register of Critical Areas" and may be referred to as the "register."

A Critical Areas Advisory Board shall be created to advise the State Planning Office in the identification of areas to be included in the register and to coordinate the use and enhance the conservation of all designated critical areas included in said register.

##### § 3312. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings:

1. Advisory board. "Advisory board" shall mean the Maine Critical Areas Advisory Board hereinafter created.

2. Critical areas. "Critical areas" mean areas containing or potentially containing plant and animal life or geological features worthy of preservation in their natural condition, or other natural features of significant scenic, scientific or historical value.

3. Register of Critical Areas. "Register of Critical Areas" means the official record and inventory of natural areas established and maintained by the State Planning Office.

#### § 3313. Maine Critical Areas Advisory Board

There is hereby created a Maine Critical Areas Advisory Board to advise and assist the State Planning Office in the establishment and maintenance of the Register of Critical Areas. The Maine Critical Areas Advisory Board, hereinafter in this chapter referred to as the "board," shall be appointed by the Governor with the approval of the Council and shall be convened by the State Planning Office and shall consist of 11 members, one of whom shall be a permanent member.

1. Permanent member. The one permanent member of the board shall be the appointed designee or the director of the State Planning Office.

2. Additional members. There shall be 10 additional members of the board who shall serve for terms of 3 years respectively, except that initially, 3 members shall be appointed whose terms shall expire at the end of one year, 3 members whose terms shall expire in 2 years, and 4 members whose initial terms will expire at the end of 3 years.

3. Officers. The board shall annually select from its membership a chairman and a secretary, and said board shall meet not less than twice a year at the call of the chairman or a majority of the members. The State Planning Office shall furnish clerical, technical and other services required by the board in the performance of its official duties.

4. Quorum; records. A quorum of the board for the transaction of business shall be 7 members. The secretary of the board shall keep a record of all proceedings of the board, which record shall be a public record.

5. Rules and regulations. The board may adopt and promulgate rules and regulations governing the conduct of its business.

6. Expenses. Members of the board shall receive no compensation, but shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties.

#### § 3314. Register of Critical Areas

1. Register of Critical Areas. The State Planning Office, with the advice and approval of the board, shall establish a Register of Critical Areas, which shall contain an inventory of sites and areas of significant natural, scenic, scientific or historic value duly classified as "critical areas" as defined in section 3312. In determining the classification of an area or site as a critical area, the State Planning Office shall consider, inter alia:

- A. The unique or exemplary natural qualities of the area or site;
- B. The intrinsic fragility of the area or site to alteration or destruction;
- C. The present or future threat of alteration or destruction;

2. The economic implications of inclusion of a critical area in the register.

2. Landowner consultation. No area or site classified as a critical area shall be included in the register without notification of the landowner at least 60 days prior to such classification. Each critical area listed in the register shall include:

A. A general description of the area or site;

B. A list of its unique or exemplary qualities and reasons for inclusion in the register;

C. Its size and location;

D. The name or names of the property owner, contingent upon the consent of the owner.

3. Recommendations. The State Planning Office shall recommend to appropriate state agencies which possess the authority to acquire property rights, through devise, gift, purchase, or otherwise, and which also possess the authority to contract with private property owners, the acquisition of property rights or the establishment of management agreements which will insure the protection of critical areas on the register whose natural qualities are threatened with adverse alteration or destruction. The State Planning Office may also recommend the acquisition of property rights or consummation of contractual management agreements regarding any critical area listed in the register to any state agency, political subdivision of the State or private citizens who have demonstrated interest in the protection of critical areas.

4. Alterations. The Critical Areas Advisory Board shall be advised by the present or prospective owner of any proposed alteration or change in the use or character of any area listed in the Register of Critical Areas. No alteration or change in use or character shall take place for 60 days subsequent to such notification unless a release is issued by the Critical Areas Advisory Board.

5. Removal of listed areas. The State Planning Office, with the advice and approval of the Maine Critical Areas Advisory Board, may remove any critical area listed in the register, when it shall determine that such protection as afforded under inclusion in the register is no longer necessary or appropriate.

Sec. 2. Appropriation. There is appropriated from the General Fund the sum of \$30,000 for the fiscal year ending June 30, 1975 to carry out the purposes of this Act.

APPENDIX 4

PROPOSED EXECUTIVE ORDER ESTABLISHING A GOVERNOR'S CABINET  
COMMITTEE ON LAND USE FOR MANAGEMENT COORDINATION AND  
CLARIFICATION OF STATE POLICY WITH RESPECT TO PRIORITY USES  
FOR THE MAINE COASTAL ZONE.

Preliminary Draft - for discussion purposes only

EXECUTIVE ORDER

Office of  
The Governor

No. \_\_\_\_\_  
Date \_\_\_\_\_

AN ORDER ESTABLISHING A GOVERNOR'S CABINET COMMITTEE ON LAND USE FOR MANAGEMENT COORDINATION AND CLARIFICATION OF STATE POLICY WITH RESPECT TO PRIORITY OF USES FOR THE MAINE COASTAL ZONE.

WHEREAS, the Legislature has, in several separate but related statements of legislative policy, stated its intentions that the Maine coast is an invaluable resource to this state and has determined that certain uses of that coastline have a higher priority than others, and

WHEREAS, the Federal Government has expressed in the Federal Coastal Zone Management Act of 1972 its interest in improving the capabilities of states for managing their coastal zone by making federal financial assistance available and by requiring federal agencies to be consistent with approved state coastal zone management plans, and

WHEREAS, the Governor through the State Planning Office is authorized to coordinate the development of a comprehensive plan for the state, and the Maine Coastal Plan as a first priority segment of that comprehensive plan requires the means for expressing the state's interest in such a plan, and

WHEREAS, the Governor through the State Planning Office has established a coastal planning process which requires the coordination of state land use oriented agencies with federal, regional, and local planning and management efforts in a manner which provides a framework of organization which will eliminate duplication and confusion in the regulation of land use in the coastal zone, and

WHEREAS, the Governor through the State Planning Office in consultation with federal, state, regional, and local interests has determined that the state possesses the proper legislative provisions for adequately managing its coastal zone insofar as presently possible, provided the administration of these legislative provisions is undertaken in a fashion consistent with good planning and management and within an identifiable organizational system,

NOW, THEREFORE, I, JAMES B. LONGLEY, Governor of the State of Maine, by virtue of the authority vested in me, do hereby establish a Governor's Cabinet Committee on Land Use to review, revise and update priorities and policies for land use in the coastal zone. The Committee will consist of the commissioners of the principal agencies with an interest in land use which will include the Department of Transportation, the Department of Inland Fisheries and Game, the Department of Conservation, the Department of Marine Resources,

the Department of Environmental Protection, the Public Utilities Commission, the Department of Agriculture, the Department of Commerce and Industry, the Department of Finance and Administration - Bureau of Taxation, the Attorney General's office, and will be chaired by the Director of the State Planning Office.

The purpose of this Cabinet Committee will be to review existing policies for coastal land use; recommend, where appropriate, executive or legislative clarifications of these policies; outline changes in the operational policies and practices of the state agencies affecting coastal land use; and review and coordinate regional land use policies so as to reflect overall state policy. In addition, the Cabinet Committee will take the necessary steps required to incorporate land and water capability analyses of coastal areas as an essential element in guiding state development permit reviews and other enforcement activities.

Finally, I also direct the chairman of the Cabinet Committee on Land Use to submit periodic reports to me on the adequacy of state policies in guiding state land use management and regulatory activities. These reports shall detail the administration of department operations on the basis of the policies that exist and, where appropriate, shall state the reasons for the infeasibility of particular policies and shall propose alternatives or additions when justified.

## APPENDIX 5

### AN INTRODUCTION TO THE MAINE COASTAL PLAN



NOAA COASTAL SERVICES CENTER LIBRARY



3 6668 14102 3129